

State Regulation of Sexuality in New Zealand 1880-1925

A Thesis
submitted in fulfilment
of the requirements for the Degree
of
Doctor of Philosophy in History
in the
University of Canterbury
by
T.C. Tulloch

University of Canterbury

1997

HQ
18
N5
T 921
957

CONTENTS

List of Tables		ii
Abbreviations		iii
Preface		iv
Abstract		vi
Introduction		1
Chapter 1.	Regulating Sexuality:	16
	The Rise of the Interventionist State	
Chapter 2.	Adultery, Insanity and Divorce:	40
	Challenging the Sanctity of Marriage	
Chapter 3.	In-laws and Incest:	96
	Redefining the Prohibited Degrees of Marriage	
Chapter 4.	Depraved Minds, Horrible Habits and Vile Productions:	134
	Sex and Censorship	
Chapter 5.	Principles and Pragmatism:	188
	Prostitution and Venereal Disease	
Chapter 6.	Protection and Control:	247
	Sex, Youth and the State	
Chapter 7.	Beyond the Pale:	297
	'Degenerates', 'Perverts' and the State	
Conclusion		348
Appendix I	Chronology of Legislation	359
Appendix II	Legislative Council: Vote Correlations	364
Appendix III	House of Representatives: Vote Correlations	369
Bibliography		371

LIST OF TABLES

Table 1.	Legislative Council Contagious Diseases Act, Women's Suffrage Voting Patterns	215
Table 2.	Legislative Council Appointees Contagious Diseases Act Voting Patterns	216
Table 3.	Legislative Councillors' Occupations	217
Table 4.	Legislative Council Contagious Diseases Act, Age of Consent Votes	263
Table 5.	Legislative Council Age of Consent, Women's Suffrage Votes	265
Table 6.	House of Representatives Age of Consent, Women's Suffrage Votes	265
Table 7.	Legislative Council Contagious Diseases Act, Young Persons' Protection Bill Votes	282
Table 8.	Illegitimate Births 1910-1915	292

ABBREVIATIONS

<i>AJHR</i>	<i>Appendices to the Journals of the House of Representatives</i>
AMIL	Auckland Museum and Institute Library
ATL	Alexander Turnbull Library
<i>CNZ</i>	<i>Cyclopedia of New Zealand</i>
<i>DNZB</i>	<i>Dictionary of New Zealand Biography</i>
<i>ENZ</i>	<i>Encyclopedia of New Zealand</i>
ICW	International Council of Women
MHR	Member of the House of Representatives
MLC	Member of the Legislative Council
NA	National Archives (Wellington)
NCW	National Council of Women
<i>NZJH</i>	<i>New Zealand Journal of History</i>
<i>NZMJ</i>	<i>New Zealand Medical Journal</i>
<i>NZPD</i>	<i>New Zealand Parliamentary Debates</i>
<i>NZPR</i>	<i>New Zealand Parliamentary Record</i>
NZSPWC	New Zealand Society for the Protection of Women and Children
WCTU	Women's Christian Temperance Union

PREFACE

I initially envisaged that this thesis would analyse the state regulation of sexuality in New Zealand through an examination of national legislation, Government Department initiatives and local council regulations. Jeffrey Weeks' *Sex, Politics and Society*, provided the inspiration for the project and seemed a suitable model to follow.¹ However, such a task was clearly beyond the scope of a doctoral thesis and the topic was consequently restricted to an analysis of legislative developments. The result is an examination of the interweaving of feminist, social purity, patriarchal, secularist and medical/scientific discourses on the battlefield of late nineteenth and early twentieth-century sexual legislation.

The *New Zealand Parliamentary Debates* have provided much of the source material for this study. Records of the major organisations which spoke on sex issues in this period supplied valuable supplementary material. Records from the Women's Christian Temperance Union, the National Council of Women, the Auckland and Wellington Societies for the Protection of Women and Children and the New Zealand Medical Association have proved particularly valuable sources of information.

The support provided by a range of institutions and individuals greatly assisted the research and writing of this thesis. The University of Canterbury and the History Department provided much appreciated financial support. The University's Doctoral Scholarship covered my living costs and Departmental conference, research and travel grants enabled me to undertake research and engage in debates with other historians outside Christchurch. I am greatly indebted to the Department for the use of an office for the last few years and for the

¹ Jeffrey Weeks, *Sex, Politics and Society: The Regulation of Sexuality since 1800* (London/New York: Longman, 1994)

encouragement, support and interest shown in my work by members of staff: in particular, Luke Trainor, Graeme Dunstall, David McIntyre, John Cookson, Marie Peters, Vincent Orange and Ian Campbell. The helpfulness of the secretarial staff - Judy Robertson, Pauline Wedlake and Rosemary Russo - on a myriad of administrative and technical details has been very much appreciated.

Help given by staff in the following libraries and archives made the research process much less daunting than might otherwise have been the case: the Macmillan Brown Library, University of Canterbury; the Hocken Library, University of Otago; the Otago Medical School Library; the Auckland Institute and Museum Library; the Alexander Turnbull Library and National Archives (Wellington).

I am very grateful for the companionship and stimulating conversation provided by fellow postgraduates and research assistants in the History Department. The friendship and support offered by Rosemary Goodyear, Tim Cooper, Adam Claasen, Jean Sharfe, Jo Aitken and Joel Hayward considerably alleviated the stresses and strains associated with writing a thesis. Morning tea debates over history, politics and a host of other subjects provided a welcome balance to my focus on my thesis.

My family have, as ever, fully supported my efforts. Many thanks are due to my parents for accommodating me over the past year and to Stephanie and Allan for helping me to keep a sense of perspective in my life. A very special thankyou is due to David whose love, encouragement and patience has been a great source of strength.

My greatest debts are owed to my supervisors, Philippa Mein Smith and Chris Connolly. Their belief in my abilities, their constant encouragement and their challenging of my work and thinking has considerably broadened my understanding of what it is to be a historian.

ABSTRACT

This thesis examines the development of sex legislation in New Zealand between 1880 and 1925. It argues that legislative developments were largely shaped by patriarchal, feminist, social purity, secular and medical/scientific discourses. Chapter I examines the rise of the last four discourses and discusses the growth of the interventionist state. Analysis of changes to marriage laws in Chapters II (Divorce) and III (Incest and In-laws) reveal strong secularist and feminist influences. Secular, feminist and purity discourses converged on the question of equal grounds for divorce but diverged on the issue of further extension of the divorce law. Secularist discourse also intersected with medical/scientific discourse on divorce debates and debates over proposed changes to the prohibited degrees of marriage.

The rise of the medical profession and medical/scientific discourse is a strong theme in Chapters IV (Censorship) and V (Prostitution and Venereal Disease). Strong links between purity and medical discourse are revealed in an analysis of New Zealand's censorship laws. However, major tensions between the discourses are apparent in debates over state regulation of prostitution and public health responses to venereal disease. Chapter VI (Sex, Youth and the State) explores the connections between late nineteenth-century childhood and feminist-purity discourses. Attempts to extend the age limits of childhood converged with feminist discourse to produce a major campaign for a higher age of consent for girls. However, feminists' desire to protect girls from men's sexual advances led to more rigorous attempts to control the behaviour of the girls themselves.

The controlling and coercive tendencies of early-twentieth century feminism are further developed in Chapter VII ('Degenerates', 'Perverts' and the State). Feminist discourse

converged with medical/scientific discourse to produce a new focus upon the 'feeble-minded' female sexual degenerate. Chapter VII also explores the impact of medical/scientific discourses on male sexual deviance. The medicalisation of homosexuality and child sexual abuse led to a reassessment of the best means of controlling or reforming male sexual offenders. Ultimately it can be concluded that conflicting and converging discourses operating within a climate of major social, ideological and technological change transformed the state regulation of sexuality in New Zealand between 1880 and 1925.

INTRODUCTION

During debate in 1910 over the Indecent Publications Bill the Attorney-General, Dr J.G. Findlay, declared:

It has ... been increasingly felt both in New Zealand and elsewhere that the limits of true liberty must be prescribed by the intelligent moral sense of the community as a whole, and that what shocks or violates that intelligent moral sense shall not be permitted in any British community. We have long since seen the necessity for legislating, and legislating with considerable rigour, against what degrades or enfeebles the physical health of our people, and the time has come when we must do as much to protect the moral health of our people.¹

Throughout the period 1880 to 1925 legislators and reformers debating changes to New Zealand's sex laws juggled the twin issues of moral and physical health alongside questions concerning personal liberty and the State's right to intervene in the private lives of the public. Increased state regulation of sexuality owed much to early concerns about the physical health of the population. However, from the very start of the period, feminist and social purity reformers insisted that legislators embrace a more holistic view of the nation's sexual health and welfare. The reformers argued that new moral codes ought to be incorporated in laws affecting sexuality. Reformers and their opponents accepted that personal liberty had to be balanced against the interests of society as a whole. Where they differed was on the question of which particular moral code or discourse ought to govern legislative action. Feminist, social purity, patriarchal, secularist and medical/scientific discourses at various times conflicted and converged to produce significant changes in New Zealand's sex laws between the late 1800s and the 1920s.

¹ *NZPD*, 149, 1910, pp.568-69.

Amendments made to New Zealand's sex laws during the late nineteenth and early twentieth centuries reflected broad international trends. The rise of feminist, secularist and medical/scientific discourses in Britain, Australia, Canada and the United States resulted in major legislative changes. A new emphasis on 'population' as a determinant of national prosperity fostered state intervention in individuals' personal lives, while nationalism and imperialism focused attention upon 'racial' strength and welfare. The centrality of sex to birth-rates and citizens' physical and mental health ensured that the regulation of sexuality remained a major concern throughout the period.

The 'sex laws' discussed in this thesis include statutes regulating divorce, marriages between in-laws (affinal marriage), censorship, prostitution, venereal disease, youthful sexuality and sexual 'degeneracy'. These statutes have been defined as 'sex laws' because they either explicitly addressed sexual behaviour or they became the subjects of direct debate about human sexual relations and practices. Divorce and affinal marriage laws are included because they inspired debate over the validity of the sexual double standard, the rights of 'defective' individuals to have sex and the rights of individuals to choose close in-laws as marital (and thus sexual) partners. Censorship legislation has a place in this thesis because sex was central to debates over obscene and indecent publications, whether in the form of fears over the spread of pornography or the dissemination of birth control information. Other laws relating to birth, reproduction or maternity are not defined as sex laws - and consequently, are not analysed in this thesis - because they were not discussed or debated in specifically sexual terms.

The history of sexuality, as British historian Jeffrey Weeks has argued, is no longer the 'virgin field' it was considered during the early 1970s.² Over the past two decades numerous articles and books have been published throughout the western world on increasingly specialised aspects of the history of sexuality. The rise of the feminist and gay rights movements of the 1960s and 1970s provided the initial impetus for the explosion of interest in this field. Inspired by these movements, activists and academics posed new questions about gender relations and the nature of human sexuality. Under the influence of anthropological, psychoanalytic and Marxist thought, some historians began to challenge biological, or 'essentialist', theories which conceptualised sexuality as 'an overpowering force in the individual that shapes not only the personal but the social life as well'. Opponents of the essentialist position argued instead that sexuality 'is not a given that has to be controlled. It is an historical construct that has historical conditions of existence.'³ Feminist, gay and social historians set out to uncover these specific conditions and to examine their influence on ideas about sexuality. This challenge to essentialism became known as social constructionism.⁴ Although essentialist arguments are still endorsed by some academics - particularly in the field of lesbian and gay studies - historians of sexuality have increasingly adopted the social constructionist approach.⁵

² Jeffrey Weeks, *Sex, Politics and Society: The Regulation of Sexuality since 1800*, 1st publ. 1981 (London/New York: Longman, 1994), p.1, citing Vern L. Bullough, 'Sex in History: A Virgin Field', *The Journal of Sex Research* 8:2 (May 1972), p.101.

³ Weeks, *Sex, Politics and Society*, pp.1-6, 10.

⁴ See Weeks, *Sex, Politics and Society*, Chapter I, on historiographical debates regarding social constructionism and sexual essentialism. For more detailed discussions of these issues see chapters by John Boswell, Robert Padgug and others in Edward Stein (ed.), *Forms of Desire* (New York & London: Garland Publishing, 1990).

⁵ Jeffrey Weeks, *Against Nature: Essays on History, Sexuality and Identity* (London: Rivers Oram Press, 1991), p.6. Feminist historians have strongly supported the social constructionist case. See Sheila Jeffreys, *The Spinster and Her Enemies: Feminism and*

The French theorist Michel Foucault played a particularly influential role in focusing historians' attention upon the social construction of sexual identities. His three volume work, *The History of Sexuality*, first published in 1976, encouraged examination of the history of discourses about sexuality and of the ways in which ideas about sexuality have changed over time.⁶ Foucault's emphasis upon sexual discourse and his particular interest in the relationship between discourse and power greatly influenced the growing field of sexuality history. Informed by his work and their own insights, many feminist, gay and social historians concentrated their attention upon the development of sexual discourses, the construction of sexual identities and the implications of particular constructions for gender relations.

Key issues and debates which have emerged in the field of late nineteenth and early twentieth-century sexuality history include questions concerning the elaboration of sexual difference and its implications for the oppression of women, the influence of sexology in 'inventing' and pathologising homosexuality and lesbianism, the importance of self-definition in the creation of sexual identities, and the roles played by first-wave feminists, purity reformers and doctors in the construction of male and female sexualities. The meaning given to sexuality in this period and the power of discourse to shape sexual identities are core issues in the field.

Sexuality, 1880-1930 (London: Pandora Press, 1985), p.2 and Lal Coveney, Margaret Jackson, Sheila Jeffreys, Leslie Kay & Pat Mahony, *The Sexuality Papers: Male Sexuality and the Social Control of Women* (London: Hutchinson/Explorations in Feminism Collective, 1984), pp.10-21.

⁶ Michel Foucault, *The History of Sexuality: An Introduction*, Vintage Books reprint edition, 1990 (New York: Random House, 1978), *passim*. See Weeks on Foucault in *Sex, Politics and Society*, pp.3-11.

Jeffrey Weeks' general survey of the history of sexuality, *Sex, Politics and Society: The Regulation of Sexuality Since 1800* (first published in 1981), provided a starting point for this thesis.⁷ Weeks is particularly interested in how and why sexuality is assigned such significance in modern society. He explores the emergence of a range of sexual discourses and examines the ways in which they interacted with each other and how some of these discourses were resisted and how others became established in official codes. Although Weeks acknowledges the importance of informal modes of sexual regulation (operating in family and community life), he has argued that Foucault has downplayed the role of the state in constructing attitudes to sexuality 'through marriage laws, the regulation of deviance, the judiciary, the police, ... the education system, the welfare system, and so on'.⁸ Weeks' work has revealed how 'the political context in which decisions are made - to legislate or not, to prosecute or ignore - can be important in promoting shifts in the sexual regime'.⁹ In *Dangerous Sexualities: Medico-Moral Politics in England Since 1830*, Frank Mort has also argued that 'Official discourses do have concrete, if complex and often bizarre, effects on the sexuality of constructed men and women'.¹⁰ This thesis builds upon the arguments of Weeks and Mort and makes the political context of sexual regulation in New Zealand its focus.

The works of other historians have also helped shape this study. While I have departed from Michel Foucault's conclusions on the relative importance of official discourse and informal 'norms', I have drawn on Foucault's notion of bio-power. Chapter

⁷ Weeks, *op cit*

⁸ Weeks, *Sex, Politics and Society*, p.9.

⁹ *Ibid*, p.14.

¹⁰ Frank Mort, *Dangerous Sexualities: Medico-Moral Politics in England Since 1830* (London: Routledge and Kegan Paul, 1987), p.4.

It's examination of the rise of the interventionist state owes much to Foucault's argument that a new concern with controlling bodies and populations led to increased regulation of sexuality.¹¹

Recent works in feminist and women's history have also contributed to this thesis. Lucy Bland's *Banishing the Beast: English Feminism and Sexual Morality, 1885-1914* (1995) contains a detailed analysis of first-wave feminist sexual discourses. Bland's work confirmed ideas developed in the course of researching and writing this thesis. Like this writer, Bland emphasises feminists' willingness to draw on, and move between, a wide range of discourses to support feminist arguments rooted in social purity and equal-rights doctrines.¹² Sheila Jeffreys and Margaret Jackson have also made significant contributions to historical debate over the development of feminist sexual discourse.¹³ However, their conclusions are less convincing and are not supported by research carried out for this thesis. Jeffreys and Jackson have argued that early twentieth century sexology undermined feminism and diverted it into a 'less-feminist' channel dominated by a glorification of motherhood. This thesis sees more continuity in the feminist position in New Zealand. The lauding of maternity apparent in early twentieth century feminist discourse echoed similar sentiments expressed by nineteenth-century feminists. Jeffreys and Jackson also see an ideological division between purity and sex reform feminists which is not apparent

¹¹ Foucault, pp.25-26, 140-41.

¹² Lucy Bland, *Banishing the Beast: English Feminism and Sexual Morality, 1885-1914* (London: Penguin, 1995), pp.xix, 304-08.

¹³ Sheila Jeffreys, 'Free From all Uninvited Touch of Man': Women's Campaigns Around Sexuality, 1880-1914', in Coveney *et al*, pp.22-44; Margaret Jackson, 'Sexology and the Social Construction of Male Sexuality', in Coveney *et al*, pp.45-68.

in the New Zealand context. Their work denies the breadth, flexibility and fluidity of first-wave feminist discourse.¹⁴

Judith Walkowitz' *Prostitution and Victorian Society: Women, Class and the State* (1981) and Susan Kingsley Kent's *Sex and Suffrage in Britain, 1860-1914* (1987) helped shape early ideas in this study about the nature of feminist sexual discourse. Walkowitz' work on feminists' attitudes to young girls' sexuality informed my understanding of the coercive elements of first-wave feminism. Kent's analysis of the late nineteenth-century 'sex war' between feminists and their opponents helped shape my ideas about changes in gender relations in this period.¹⁵ Barbara Brookes' work on New Zealand feminists' campaigns to redefine male sexuality as controllable provided valuable insights into events in New Zealand. Brookes' 1993 article, 'A Weakness for Strong Subjects: The Women's Movement and Sexuality', revealed continuities in feminist thought between the 1880s and 1920s but also exposed the contradictions inherent in feminist discourse.¹⁶

With regard to medical and scientific discourses on sexuality, Alan Brandt's history of venereal disease in America, *No Magic Bullet*, and Stephen Garton's writings on the history of eugenics in Australia have similarly influenced this thesis. Brandt's analysis of sexual disease as a metaphor for sin provided insights into public and political reactions to the age-old scourge of venereal disease. Garton's concept of a sliding scale of discourses, where individuals move from one ensemble of beliefs to another depending on the issue at

¹⁴ See Bland, pp.xviii, xix, 257, 278 on problems with Jeffreys' and Jackson's analyses.

¹⁵ Judith Walkowitz, *Prostitution and Victorian Society: Women, Class and the State* (Cambridge: Cambridge University Press, 1980), pp.247-49; Susan Kingsley Kent, *Sex and Suffrage in Britain, 1860-1914* (Princeton: Princeton University Press, 1987), Chapters II, III & V.

¹⁶ Barbara Brookes, 'A Weakness for Strong Subjects: The Women's Movement and Sexuality', *NZJH* 27:2 (October 1993), *passim*.

hand, proved particularly useful in explaining apparent contradictions within feminist and medical arguments.¹⁷

To date, most studies of New Zealand's sexuality history have either focused upon single issues - for example, prostitution, divorce or censorship - or have incorporated discussion of sexuality in more general histories of specific social groups, notably the first-wave feminists.¹⁸ These works have provided useful insights into late nineteenth and early-twentieth century attitudes to sexuality. In particular, they have identified social purity and domestic ideologies as central components of New Zealand feminist sexual discourse. Charlotte Macdonald's work on the introduction of the Contagious Diseases Act has also shown how social control imperatives played an important role in legislative

¹⁷ Allan Brandt, *No Magic Bullet: A Social History of Venereal Disease in the United States Since 1880* (New York: Oxford University Press, 1985); Stephen Garton, 'Sir Charles Mackellar: Psychiatry, Eugenics and Child Welfare in New South Wales', *Historical Studies* 22:86 (April 1986) & 'Sound Minds and Healthy Bodies: Re-Considering Eugenics in Australia, 1914-1940', *Australian Historical Studies* 26:103 (October 1994).

¹⁸ Stevan Eldred-Grigg's *Pleasures of the Flesh* (Wellington: A.H. & A.W. Reed, 1984) is an exception. However, Eldred-Grigg's treatment of the subject is very general and is aimed at a popular rather than a scholarly audience. Useful general published studies include Patricia Grimshaw, *Women's Suffrage in New Zealand* (Auckland: Auckland University Press, 2nd ed., 1987); Phillida Bunkle, 'The Origins of the Women's Movement in New Zealand: The Women's Christian Temperance Union, 1885-1895', in P. Bunkle & B. Hughes (eds.) *Women in New Zealand Society* (Auckland: Allen & Unwin, 1980); Charlotte Macdonald, 'The "Social Evil": Prostitution and the Passage of the Contagious Diseases Act (1869)', in B. Brookes *et al*, *Women in History: Essays on European Women in New Zealand* (Wellington: Allen & Unwin/Port Nicholson Press, 1986); Raewyn Dalziel, *Focus on the Family: The Auckland Home and Family Society, 1893-1993* (Auckland: David Ling Publishing Ltd, 1993); Barbara Brookes, *op. cit.*; Dorothy Page, *The National Council of Women: A Centennial History* (Auckland: Auckland University Press/Bridget Williams Books/NCW, 1996); and Roberta Nicholls, *The Women's Parliament: The National Council of Women of New Zealand 1896-1920* (Wellington: Victoria University Press, 1996). See chapter footnotes for other, more specific works including unpublished theses and research essays.

decision making on sexual issues.¹⁹ Recent works by Macdonald, Dorothy Page and Roberta Nicholls have tended to emphasise an apparent decline in the New Zealand feminist movement during the early 1900s.²⁰ However, research for this thesis has revealed greater continuity in feminist campaigns than is acknowledged in these works. An over-emphasis on the activities of the National Council of Women which suspended its activities between 1906 and 1916 is responsible for this recent focus on feminist decline. This thesis sees a continuation of the feminist attack on sexual license in the activities of the Women's Christian Temperance Union, a strong advocate of purity and domestic feminism throughout the period. The strong strand of domestic feminism in the New Zealand suffrage movement (identified in Raewyn Dalziel's 1977 article, 'The Colonial Helpmeet') persisted well into the 1920s.²¹ The Women's Christian Temperance Union staunchly upheld this domestic feminist discourse and its members' contribution to debates on sex legislation should not be underestimated.

Within New Zealand, historians have tended to focus upon a relatively narrow band of sexual issues, notably prostitution and the influence of feminist and medical/scientific discourses. A broader examination of New Zealand's sexuality history reveals that secular discourses were also highly significant for reform of the sex laws. Changes in the state regulation of sexuality between 1880 and 1925 reveal a continuous interplay between a

¹⁹ Macdonald, *passim*. See also Charlotte Macdonald, *A Woman of Good Character: Single Women as Immigrant Settlers in Nineteenth Century New Zealand* (Wellington: Bridget Williams Books/Historical Branch, 1990), Chapter VII.

²⁰ Page, Chapter III; Nicholls, Chapters V & VI; Charlotte Macdonald, *The Vote, the Pill and the Demon Drink: A History of Feminist Writing in New Zealand, 1869-1993* (Wellington: Bridget Williams Books, 1993), p.68.

²¹ Raewyn Dalziel, 'The Colonial Helpmeet: Women's Role and the Vote in Nineteenth-Century New Zealand', *NZJH* 11:2 (October 1977), *passim*.

multitude of discourses. Purity and secular discourses remained strong from the start to the end of the period and participants in public and political debates drew upon different discourses at different times to defend their stances on specific issues.

This thesis was inspired by social constructionist accounts of the history of sexuality. As a consequence it is primarily concerned with the development of ideas about sexuality. It concentrates upon legislators' and lobby groups' perceptions about male and female sexual instincts and their attempts to regulate sexual beliefs and behaviours. The regulation of sexuality occurs on many different levels in society. Families, neighbours, communities and state officials all influence individuals' sexual behaviour. However, in order to reduce the thesis to manageable proportions the topic has been restricted to an account of 'history from above': a history of attempts to regulate sexuality through statute law. Chapters consequently chart the development of sexual discourse in the sphere of national politics.

This thesis draws on primary sources and the disparate histories of sexuality produced by postgraduates and professional historians in recent years to analyse changes in sexual discourse in this period. The *New Zealand Parliamentary Debates* provided much of the primary material. The major discourses discussed in this thesis - feminist, medical, religious and secular discourse - came together in this forum. However, to rely upon an examination of parliamentarians' speeches alone would result in a rather superficial account of the development of ideas about sexuality in New Zealand. Consequently, the records of the major lobby organisations have also been drawn on to provide a fuller account of events. The records of the Women's Christian Temperance Union, the National Council of Women, the Auckland and Wellington Societies for the Protection of Women and

Children, and the *New Zealand Medical Journal* all proved valuable sources of information. Records from a range of government departments also added depth to this study. While it is recognised that a truly thorough account of the history of sexual discourse requires studies of official discourse to be accompanied by studies of informal and less structured discourses, this is not always feasible. In this thesis, theses, research essays and published studies have been drawn on to supplement primary material which provides insights into 'ground level' discourse. However, as Frank Mort has argued, studies of official discourses have a validity of their own. Discourse which becomes encoded in legislation can have a significant impact upon public perceptions and ideas about sexuality. Sometimes legislation follows a widespread shift in attitudes and sometimes it precedes such a shift. The processes by which sex laws are constructed and redefined can tell us a great deal about the development of sexual discourse and the construction of sexual identities in the past and the present.

* * *

This study begins with an account of the rise of the interventionist state and its increased involvement in the regulation of sexuality. The remainder of the thesis is structured along thematic rather than chronological lines in order to provide a clear account of legislative developments. The different subjects - divorce, affinal marriage, censorship, prostitution, juvenile sexuality and sexual 'degeneracy' - are linked through analysis of influential discourses, principally feminist, social purity, secular and medical/scientific ones.

Chapter I examines the influences which led to increased state intervention in individuals' sexual lives during the late 1800s and early 1900s. It identifies the main social

and ideological changes which underpinned the rise of the interventionist state and looks at how new discourses associated with these changes influenced state regulation of sexuality. Problems posed by population increase, industrialisation and urbanisation encouraged states to become more involved in regulating public health and social order. Increased awareness of the importance of demographics for national prosperity also encouraged increased state monitoring of the health and welfare of citizens. The rise of new discourses - evangelical Christian social purity discourse, feminist discourse, secular discourse and scientific/medical discourse - significantly shaped state regulation of sexuality. As the roots of these discourses extend beyond the beginning of European settlement of New Zealand their development is examined in an international, but particularly a British, context. The six remaining chapters assess how these influences and discourses operated in New Zealand.

Laws governing marriage and divorce had implications for the boundaries of socially legitimate sexual activity. The rise of secularism during the nineteenth century played a particularly important role in reshaping marital law during the late 1800s and early 1900s. Chapters II and III examine the influence of secular, religious and feminist ideologies on divorce law and the prohibited degrees of marriage. Secularists argued that marriage was a social rather than a religious contract and that the grounds for divorce and the rules regarding marriages between affinal relatives (in-laws) should reflect this. They campaigned for equalisation and liberalisation of the divorce law and for fewer restrictions on men's and women's choice of spouse. Non-conformists opposed to legislation based solely on Anglican precepts supported demands for secularised marital legislation. Feminist and social purity reformers joined with the secularists and non-conformists in

demanding that the grounds for divorce be made equal for men and women. Here they came into conflict with traditional patriarchal discourse which supported the inequalities embedded in the legislation. However, although feminist, purity and secularist discourses converged on the question of equal divorce, they did not necessarily agree on other changes to the legislation. Many feminists and purity reformers opposed further liberalisation of the divorce law.

The rise of medical/scientific discourse added weight to secularist demands for reform of marital legislation. Supporters of 'scientific' theories which highlighted the dangers of allowing the 'unfit' to breed agreed with secularists that insanity ought to be grounds for divorce. Increased focus upon the physiological consequences of marriage also influenced politicians' attitudes to the prohibited degrees of marriage. Religious justifications for bans on marriages between in-laws became less potent as politicians focused their attention upon marriages contracted by diseased or defective individuals.

Chapter IV develops the theme of the rise of medical/scientific discourse in the context of reform of New Zealand's censorship laws. Early changes to the legislation came about in response to concerns raised by regular doctors and by social purity reformers over 'indecent' advertisements promoting remedies for sexual ailments. Regular doctors seeking to protect the public from medical charlatans and eager to enhance their own reputations as the experts on sexual ills largely drove early attempts to tighten censorship laws. Doctors' and purity reformers' interests readily converged on censorship issues. Strong pro-natalist concern over the decline of the birth-rate also encouraged politicians to introduce tighter restrictions on 'indecent' publications including those which discussed or described artificial methods of birth control. The rise of new audiences for printed material and new

technologies such as the cinema similarly led to tighter controls being placed on potentially morally corrupting material.

The tensions between medical discourse and feminist and purity discourses are explored in Chapter V through an examination of changing attitudes towards prostitution and venereal disease. Throughout the period politicians emphasised the need to treat venereal disease and consequently prostitution as a simple question of public health. However, feminist and social purity reformers insisted that politicians recognise that the sexual double standard which underpinned most proposed solutions critically undermined the public health aims of these initiatives. They also argued that any attempts to combat venereal disease must incorporate a moral dimension. Anything which appeared to sanction extra-marital sex ought not to receive the backing of the state. Purity, feminist, traditional patriarchal and medical/scientific discourse all played a part in debates over reform of prostitution and venereal disease legislation.

New concerns about youthful sexual vulnerability are addressed in Chapter VI. The intersection of childhood and feminist-purity discourses is examined in the context of the late nineteenth century sentimentalisation and extension of childhood. A discussion of the campaign to raise the age of consent for girls analyses the feminist attack upon male sexual license and feminists' attempts to portray ever-older girls as sexual innocents in need of state protection. Rising concern over 'juvenile depravity' and the apparent decline of family life among the poorer classes is also explored. The chapter discusses the protective and coercive aspects of political and purity-reform discourses concerning girls' sexuality and addresses an apparent hardening in feminist and social purity attitudes to sexually active girls.

Chapter VII concentrates upon discourse surrounding male homosexuality, paedophilia and the 'feeble-minded' female sexual degenerate. The rise of the new sexology and the medicalisation of morality during the late nineteenth and early twentieth centuries led to new conceptualisations of sexual 'degenerates' and 'perverts'. Feminist and medical/scientific discourses converged in the early 1900s on the question of sexual perversion. The feminists co-opted medical discourse which supported their own morals-based judgments about people who persistently breached a strict sexual moral code. The medicalisation of morality is placed in its wider social context of growing concern over racial strength and national efficiency. An analysis of evidence provided to the 1924 Committee of Inquiry into Mental Defectives and Sexual Offenders provides insights into the ways in which feminist and medical discourses helped construct a range of sexual degenerates. The thesis concludes with a discussion of how the main sex-reform discourses conflicted and converged on different sexual questions between 1880 and 1925.

CHAPTER I

REGULATING SEXUALITY

THE RISE OF THE INTERVENTIONIST STATE

In September 1900, during a Legislative Council debate on incest, elderly Councillor Thomas Kelly expressed his exasperation at having to deal with yet another Bill about sexual vice:

I do not know the reason why all these sex Bills are brought in; I do not know whether it is in consequence of the 'hysterical women,' or some so-called purity society, or whether it is simply a softening of the brain; but I say there is no necessity whatever for legislation of this class.²²

Kelly, a member of the House of Representatives from 1869 to 1884 and a member of the Council since 1892, found that his political career coincided with a period of intense legislative activity on sexual issues.²³ Between 1880 and 1900 the New Zealand Parliament relaxed the divorce laws, amended the prohibited degrees of marriage, raised the age of consent for girls, introduced new censorship provisions, and fiercely and repeatedly debated measures to combat prostitution and 'juvenile depravity'. A member of the Council until 1913, Kelly endured several more years of debate over 'sex Bills'. Parliament continued to debate these issues, alongside new concerns about sex 'degenerates' or 'perverts', well into the 1920s.

Why did New Zealand experience a wave of parliamentary concern over sexuality in the late nineteenth and early twentieth centuries? Kelly's 'hysterical women', the first wave

²² *NZPD*, 113, 1900, p.476.

²³ Thomas Kelly (1830-1921), a farmer, had been the member for New Plymouth. He was born on the Isle of Man and emigrated to New Zealand in 1855: *CNZ*, Vol.VI, pp.44, 46.

feminists, certainly played an important part in drawing sexual issues to the attention of the politicians. Social purity societies likewise highlighted sex-related problems in the community. But what influences lay behind the emergence of these groups and what other factors contributed to increased state concern over sexual behaviour in New Zealand?

Increased state interest in regulating sexuality occurred within an international context of ideological and social change. New Zealand was by no means unique in experiencing a rise in legislative activity about sexuality as legislators throughout the English-speaking world debated and enacted similar laws regulating aspects of citizens' sexual lives. New Zealand's politicians were acutely aware of overseas developments: their parliamentary speeches were full of references to the arguments expressed and actions taken by their counterparts in Britain, the Australian colonies, the United States of America, and less frequently, Canada and continental Europe.

The increased attention paid to sexuality by western politicians was part of a broader regulatory trend, the roots of which lie in specific eighteenth and early nineteenth-century demographic, economic, social and ideological developments. Population increase, the rise of capitalism, the rise of the middle classes, and rapid industrialisation and urbanisation all contributed to increased state intervention in the lives of citizens. In particular, social problems associated with rapid urbanisation and industrialisation encouraged politicians to take a more active role in regulating the lives of the general public. During the nineteenth century politicians sought more and more information about the nature of society and its most pressing social problems. This new appetite for investigation encouraged increased state

involvement in the lives of the people through public health and other reforms. As Oliver MacDonagh has argued,

All of this [research] enabled the administration to act with a confidence, a perspective and a breadth of vision which had never hitherto existed ... For the exposure of the actual state of things in particular fields was in the long run probably the most fruitful source of reform in nineteenth-century England. The bare facts of the extent of suffering, waste, dirt or disease when made known corroded the opposition to reform, whether that opposition was grounded in doctrine, self-interest or inertia.²⁴

The development of national population statistics, the introduction of public health regulations, and the emergence of new methods of policing the population all provide examples of this new interventionist spirit.²⁵ Changes to the state regulation of sexuality developed alongside other forms of social monitoring, reform and regulation.

Increased support for state intervention also owed much to intellectual developments. The rise of humanitarianism proved particularly important in encouraging authorities to attempt to improve or regulate the lives of the general public. Utilitarian and evangelical ideologies significantly contributed to this increased adherence to a humanitarian interventionist ethos. Benthamites and utilitarians endorsed the pursuit of happiness and the avoidance of pain on the grounds of reason.²⁶ Their focus upon cause and effect and upon the scientific study of natural laws also encouraged a more interventionist mind-set. Rationalism

²⁴ Oliver MacDonagh, *Early Victorian Government, 1830-1870* (London: Weidenfeld and Nicolson, 1977), p.6.

²⁵ *Ibid.*, Chapter I; Arthur J. Taylor, *Laissez-faire and State Intervention in Nineteenth-Century Britain* (London: Macmillan, 1972), p.36. For a discussion of new policing policies see Richard Hill, *Policing the Colonial Frontier: The Theory and Practice of Coercive Social and Racial Control in New Zealand, 1767-1867*, Vol.I (Wellington: Historical Publications Branch, Department of Internal Affairs, 1986), pp.93-118.

²⁶ MacDonagh, p.7; Edward Royle, *Victorian Infidels: The Origins of the British Secularist Movement, 1791-1866* (Manchester: Manchester University Press, 1974), pp.22-23.

provided for increased human agency by placing a greater distance between God and the individual. Rationalist doctrines and more secular attitudes encouraged individuals to actively intervene in social relations and social conditions rather than leave all in the hands of God.²⁷ However, religious evangelicism also encouraged the spread of humanitarianism and greater involvement in the lives of the public. The evangelicals promoted a policy of active engagement in 'good works'. They sought a more active role in regulating their own and their neighbours' lives through philanthropic activity and missionary work among the poor.²⁸ Rising secularist and religious evangelical discourses did much to smooth the way for increased state intervention in the lives of communities and individuals.

I

A new awareness of the significance of demographics for economic and social development lay at the heart of increased state regulation of sexuality. In England, population growth and major transformations in the geographical distribution of the population resulted in a labour surplus, poverty and deteriorating urban living conditions. Increasingly sophisticated economic theories highlighted the role played by population in determining national prosperity. Vigorous debate over Thomas Malthus' 1798 *Essay on the Principle of Population* publicised the potential problems of uncontrolled population growth.²⁹ In 1801, stimulated by economic debate, the condition of the poor and by the example of other countries, the English state carried out the first of the regular national censuses. Pressure for

²⁷ Royle, *Infidels*, pp.11, 22.

²⁸ MacDonagh, p.7.

²⁹ Neil Tranter, *Population and Industrialisation: The Evolution of a Concept and its Practical Application* (London: Adam & Charles Black, 1973), pp.11-12, and *Population Since the Industrial Revolution: The Case of England and Wales* (London: Croom Helm, 1973), pp.15, 188-192.

more accurate and detailed reporting of births, deaths and marriages developed over the following decades.³⁰ In 1833 the government appointed a Select Committee to examine the existing system, whose findings resulted in the introduction of a system of centralised, civil vital registration in England and Wales in 1837.³¹ When New Zealand became a Crown Colony in 1840, the Colonial Office promptly arranged for the annual collection of its population statistics, including the numbers of birth, deaths and marriages.³²

The increased focus on population as a significant determinant of national prosperity led not only to a 'numbering of the people', but to a wider examination of citizens' sexual lives. Birth rates, age at marriage, illegitimacy rates and the use of contraceptives all became significant issues for the state.³³ As Michel Foucault has argued,

Through the political economy of population there was formed a whole grid of observations regarding sex.... It was essential that the state know what was happening with its citizens' sex, and the use they made of it, but also that each individual be capable of controlling the use he made of it. Between the state and the individual, sex became an issue, and a public issue no less; a whole web of discourses, special knowledges, analyses, and injunctions settled upon it.³⁴

³⁰ D.V. Glass, *Numbering the People: The Eighteenth-Century Population Controversy and the Development of Census and Vital Statistics in Britain* (Farnborough: D.C. Heath Ltd/Saxon House, 1973), pp.90-91. A reliance on Anglican parish lists for details of vital registration disadvantaged Catholics and Dissenters. Pressure for reform also came from the medical profession, statisticians and actuaries involved in annuities, life assurance and Friendly societies: Glass, pp.118-126.

³¹ *Ibid.*, pp.126-129. Despite the improvements made to the system in 1837, registration of births and deaths was not made compulsory in England until 1874: Anthony Wohl, *Endangered Lives: Public Health in Victorian Britain* (London: J.M. Dent & Sons, 1983), p.11.

³² *Statistics of New Zealand for the Crown Colony Period: 1840-1852* (Auckland University, 1954), Appendix A.

³³ Michel Foucault, *The History of Sexuality: An Introduction*, Vintage Books reprint edition, 1990 (New York: Random House, 1978), pp.25-26. See also Frank Mort, *Dangerous Sexualities: Medico-Moral Politics in England Since 1830* (London: Routledge & Kegan Paul, 1987), pp.44-45.

³⁴ Foucault, p.26.

The state increasingly viewed citizens' sexual behaviour as a matter of national significance, worthy of close monitoring and regulation.

II

The rise of the nineteenth-century public health movement with its sanitary reforms also paved the way for increased state intervention in the sexual lives of the public. During the early 1800s, industrial pollution and the rapid growth of slum housing resulted in severe water supply and waste disposal problems for a number of English cities.³⁵ From the 1830s, periodic outbreaks of cholera highlighted the dangers posed to all by the squalid and insanitary living conditions of the poor. 'Filth' diseases might first appear in the slums but they could all too easily be transmitted to the more comfortable classes. Spurred on by utilitarian and evangelical ideologies, middle-class social reformers exposed and condemned the dangerously unhealthy living conditions and habits of the urban poor.³⁶ The reformers argued that the state ought to play a greater role in maintaining public health.³⁷ Their efforts resulted in the gradual development of a state-controlled public health infrastructure. The introduction of the New Poor Law in 1834 and the appointment of local Medical Officers of

³⁵ Roy Porter, *Disease, Medicine and Society in England, 1550-1860* (London: Macmillan, 1993), p.55.

³⁶ Wohl, pp.6-7; Porter, pp.55-57; Leonore Davidoff and Catherine Hall, *Family Fortunes: Men and Women of the English Middle-Class, 1780-1850* (London: Hutchinson, 1987), p.27.

³⁷ Reformers' desire for greater involvement of the state in public health encountered opposition from a significant number of radicals and Tories who regarded central interference with suspicion. See Christopher Lawrence, *Medicine in the Making of Modern Britain, 1700-1920* (London & New York: Routledge, 1994), p.47.

Health in 1848 proved crucial steps in the state's assumption of responsibility for the health of the population.³⁸

New Zealand's governing authorities proved more reluctant to become involved in public health initiatives than their British counterparts. Popular belief that New Zealand was a particularly healthy country contributed to a sense of complacency about public health. Politicians associated urban filth and disease with the Old World. However, as the colony made the transition from a colonial to a settled society, public health issues attracted more attention. In 1872 Parliament enacted the colony's first Public Health Act. The legislation largely dealt with quarantine and vaccination issues but also addressed insanitary practices in the larger towns. Although the legislation contained serious deficiencies its introduction demonstrated a new willingness on the part of the colonial government to shoulder responsibility for the general health of the wider community.³⁹

In accepting greater responsibility for the general health and welfare of citizens, states necessarily became more involved in regulating citizens' personal lives. During the nineteenth century, appeals to 'public health' enabled governing authorities to ride rough-shod over traditional 'liberties of the person' and appeals to privacy.⁴⁰ Between 1853 and 1864, the English, Canadian and New Zealand Parliaments all introduced legislation providing for the

³⁸ Porter, pp.56-57. For a discussion of the arguments surrounding state intervention in public health see Mort, pp.16-18, 32-36.

³⁹ See Derek Dow, *Safeguarding the Public Health: A History of the New Zealand Department of Health* (Wellington: Victoria University Press/Historical Branch, 1995), pp.21-24.

⁴⁰ During the eighteenth century, English authorities proved reluctant to carry out a national census on the grounds that citizens would view the measure as a gross invasion of personal privacy: Glass, pp.19-20. See also Porter, pp.57-58.

compulsory smallpox vaccination of infants.⁴¹ Vaccination legislation paved the way for the more invasive venereal disease legislation of the 1860s. During this decade England, New Zealand and several Australian colonies enacted the infamous Contagious Diseases Acts: legislation which provided for the compulsory genital examination of suspected prostitutes.⁴² Vaccination and Contagious Diseases legislation provided a vivid illustration of the new readiness of western states to intervene in the personal lives of citizens.

State concern over the health and welfare of the population lay behind all sex legislation initiatives. However, a range of other influences significantly shaped state responses to sexual issues. Feminist and social purity discourses, traditional patriarchal discourse, rising secularism and medical/scientific discourse all played particularly important roles in the shaping of state responses to sexuality during the late nineteenth and early twentieth centuries. The rise of the social purity and feminist movements created a major force for change. Purity and feminist reformers challenged traditional patriarchal precepts which underpinned existing sex legislation. In particular, they demanded legislative recognition of a single standard of morality for men and women. Supporters of the traditional patriarchal ideology frequently resisted reformers' efforts to amend legislation, and their intransigence contributed to long-running political battles over reform of the sex laws.⁴³ The

⁴¹ See Dow, pp.28-30, for a discussion of vaccination in New Zealand. See F.B. Smith, *The People's Health 1830-1910* (London: Croom Helm, 1979), pp.157-170, regarding smallpox vaccination in England.

⁴² See Chapter V, pp.185-87.

⁴³ In recent years Australian historians have increasingly used the term 'masculinist' to describe lingering patriarchal attitudes and practices in the colonies. However, in this thesis the term 'patriarchal' is used rather than 'masculinist' in order to acknowledge the links between early colonial sex laws and older British law rooted in traditional aristocratic, patriarchal discourse. On 'masculinism' in Australia see Marilyn Lake, 'The Politics of Respectability: Identifying the Masculinist Context', *Historical Studies* 22:86 (April 1986);

rise of science during the late nineteenth century and the subsequent strengthening of the orthodox medical profession also had major implications for the state regulation of sexuality. Medical and scientific discourse offered new perspectives upon sexuality prompting politicians, purity reformers, feminists and doctors to embrace new scientific doctrines to justify their positions on sex issues.

III

Evangelical Christianity played a major role in the rise of the social purity and feminist movements. It also made a significant contribution to the rise of the new interventionist spirit of the nineteenth century. The Protestant Evangelical movement first appeared during the early eighteenth century as a reaction against Enlightenment developments in theology and religious outlook. In contrast to the depersonalized God of the Enlightenment the Evangelicals championed the idea of God as 'intensely and immediately present, a Saviour directly and personally knowable, busy in and among his creation'.⁴⁴ Evangelicals stressed the primacy of conversion over baptism, scriptural over ecclesiastical authority and preaching and prayer over the administration of the sacraments. The movement developed along three main channels: Methodism, Non-conformity, and Anglican Evangelicism.⁴⁵ Periodic 'revivals' kept the movement alive throughout the nineteenth century.

Chris McConville, 'Rough Women, Respectable Men and Social Reform: A Response to Lake's "Masculinism"', *Historical Studies* 22:88 (April 1987); and Judith Allen, '"Mundane" Men: Historians, Masculinity & Masculinism', *Historical Studies* 22:89 (October 1987).

⁴⁴ Geoffrey Best, 'Evangelicism and the Victorians', in Anthony Symondson (ed.), *The Victorian Crisis of Faith* (London: Society for the Promotion of Christian Knowledge, 1970), p.39.

⁴⁵ *Ibid.*, pp.37-43.

Evangelical concern for the sick, the weak and the helpless encouraged both the growth of private philanthropy and increased state intervention in people's lives.⁴⁶ Evangelicals, together with more secular-minded reformers, believed that social progress and moral reform required a pure environment and a healthy population. They supported public health initiatives in the belief that environmental reforms would facilitate the moral reform of the working classes. Although himself a utilitarian, leading English sanitary reformer Edwin Chadwick expressed the opinion of many evangelicals when he declared that 'The fever nests and seats of physical depravity are also the seats of moral depravity, disorder and crime'.⁴⁷ Evangelical concern over the moral state of the poor, and their consequent desire to improve their living conditions, made a significant contribution to the development of a more interventionist state.

The largely middle-class and skilled working-class Evangelical movement promoted a code of 'respectability' which was play a major role in shaping Victorian and Edwardian attitudes to sexuality. Evangelicism 'formed the central element of that moral revolution which [turned] the fleshly, earthy, plain-spoken England of Fielding and Samuel Johnson into the conventionally respectable, carefully worded England of Dickens and Matthew Arnold'.⁴⁸ Rooted in the late eighteenth century Evangelical challenge to aristocratic immorality, the new ideology of respectability also owed much to bourgeois fears of social disintegration. Rapid social changes together with the French Revolution inspired widespread fears of social collapse. Ideologies of respectability and domesticity promoted by the Evangelicals provided

⁴⁶ Jeffrey Weeks, *Sex, Politics and Society: The Regulation of Sexuality Since 1800* (London & New York: Longman, 1994), p.75.

⁴⁷ Wohl, pp.6-7.

⁴⁸ Best, p.44. See also Davidoff and Hall, pp.21-22, 25-28.

the middle classes with an apparent cure for the social and moral disorder that appeared to threaten the nation. The dominant classes increasingly considered sexual and family decorum to be essential to social stability. It was in the evangelically-inspired middle classes that sexuality first acquired major ideological significance.⁴⁹

The Evangelicals considered sex one of the principal sources of moral pollution and disorder. From the 1840s evangelical reformers increasingly turned their attention to the dangers posed to society by prostitution. Prostitution, they argued, not only spread venereal disease, it desecrated marriage and undermined the family.⁵⁰ Many doctors and policemen supported regulation of prostitution via the Contagious Diseases Acts.⁵¹ However, this disease-centred approach failed to satisfy evangelical reformers concerned with the moral and social implications of prostitution. Moral reformers argued that the regulation of prostitution made vice safe for men and gave official sanction to immorality. Prostitution, they declared, ought to be totally eradicated from society, not regulated.⁵²

The debate over prostitution formed part of a wider evangelically-inspired movement to purify society. Middle-class Evangelicals strove throughout the nineteenth century to transform public and private morality. This reforming zeal became particularly strong during the latter decades of the century. Insecurity stemming from late nineteenth-century international tensions, the rise of feminism, the growth of socialism and rapid social changes associated with urbanisation and industrialisation provided fertile ground for the rise of the

⁴⁹ Weeks, pp.27, 32-33.

⁵⁰ Judith Walkowitz, *Prostitution and Victorian Society: Women, Class and the State* (Cambridge: Cambridge University Press, 1980), p.33.

⁵¹ David Pivar, *Purity Crusade: Sexual Morality and Social Control 1868-1900* (Westport: Greenwood Press, 1973), pp.32; Walkowitz, p.42.

⁵² Walkowitz, p.80.

social purity movement.⁵³ National strength and stability, the reformers argued, depended upon moral and sexual purity. The Evangelical revival which swept through the English-speaking world in these years further supported the demand for moral reform. In England, controversy over the Contagious Diseases Act and a series of high profile sexual scandals over divorce, the White Slave Trade and homosexuality fed the movement.⁵⁴ The controversial issue of state regulation of prostitution similarly stimulated the rise of social purity movements in the United States, Australia and New Zealand.⁵⁵ The social purity reformers demanded a single standard of sexual morality for men and women and an end to prostitution and the sexual exploitation of young girls, forming a range of organisations to work amongst 'fallen' women and other sufferers and to campaign for changes to unsatisfactory legislation.

IV

The social purity movement drew much of its support from the late nineteenth-century feminist movement. Inspired by evangelical ideologies which emphasised women's special moral qualities, many middle-class women became deeply involved in the campaign to purify society. At the same time, many also actively campaigned for women's suffrage. Although social purity reformers did not necessarily support votes for women and not all suffragists supported social purity causes, there remained a considerable degree of overlap

⁵³ Weeks, p.87; Carol Bacchi, 'Evolution, Eugenics and Women: The Impact of Scientific Attitudes towards Women, 1870-1920, in E. Windschuttle (ed.), *Women, Class and History: Feminist Perspectives on Australia, 1788-1978* (Sydney: Fontana/Collins, 1980), pp.132-134.

⁵⁴ Weeks, pp.86-87.

⁵⁵ Pivar, p.6.

between the memberships of the two movements. Concern over the sexual exploitation of women and children formed a central plank in both programmes.

The feminists campaigned for the moral reform of society and for equal rights for women. The origins of equal-rights feminism lay in the eighteenth century Enlightenment with its emphasis upon egalitarianism, liberty and democracy. In 1792, inspired by the French Revolution, Mary Wollstonecraft published *A Vindication of the Rights of Women*, the founding document of the feminist movement. Wollstonecraft applied arguments used to support the extension of full equal civil and political rights to men to argue that intelligent and able women ought to be given every opportunity to make the most of their abilities.⁵⁶ The rise of the middle classes during the nineteenth century strengthened the demand for civil rights for women. Increased wealth among the middle-classes resulted in the creation of a new class of leisured women.⁵⁷ Dissatisfied with the limitations of their role and stimulated by prevailing libertarian, democratic and evangelical ideologies, many of these women actively sought out new roles and increased power over their own destinies. Women throughout the English-speaking world wrote letters to the papers, published pamphlets, organised public meetings and formed organisations to fight for their rights. They lobbied for equal educational opportunities for girls, the opening up of the professions to women, votes for women and they campaigned for the reform of laws dealing with marriage, divorce,

⁵⁶ Mary Wollstonecraft, *A Vindication of the Rights of Women* (1792), cited in Dorothy Page, *The National Council of Women: A Centennial History* (Auckland: Auckland University Press/Bridget Williams Books with the National Council of Women, 1996), p.2, and Carol Bacchi, *Same Difference: Feminism and Sexual Difference* (Sydney: Allen & Unwin, 1990), p.7.

⁵⁷ Davidoff and Hall, pp.195-97.

property and the guardianship of children.⁵⁸ Together with the purity reformers, the feminists also demanded greater state protection of sexually vulnerable women and girls from irresponsible and licentious men.

Equal-rights feminism owed much to a major shift in sentiment apparent in the rise of affective individualism and companionate marriage during the eighteenth and nineteenth centuries. During the 1700s elites incorporated new concepts of benevolence in their codes of conduct. This new attitude contributed to the abolition of slavery; reform of the treatment of the sick, the criminal and the mentally ill; suppression of many cruel sports; and attempts to prevent the maltreatment of animals and humans. The increased concern over the welfare of the weak and the helpless had beneficial results for the status of women and children. At the same time elites placed increased emphasis on the pursuit of individual happiness. These philosophical developments, together with the emergence of the late eighteenth-century Romantic movement, encouraged the development of warmer, more equal and more openly emotional relationships between husbands and wives.⁵⁹ Companionate marriages, unions in which romantic love and personal happiness outweighed duty to the lineage or financial considerations, became the ideal. Love was no longer considered a luxury in marriage but a

⁵⁸ Patricia Grimshaw, *Women's Suffrage in New Zealand*, 1st publ. 1972 (Auckland: Auckland University Press, 2nd ed., 1987), pp.xiii-xvi. See also Lucy Bland, *Banishing the Beast: English Feminism and Sexual Morality, 1885-1914* (London: Penguin, 1995), *passim*; Susan Kingsley Kent, *Sex and Suffrage in Britain, 1860-1914* (Princeton: Princeton University Press, 1987), *passim*; Philippa Levine, *Victorian Feminism, 1850-1900* (London: Hutchinson, 1987), *passim*; Mary L. Shanley, *Feminism, Marriage and the Law in Victorian England, 1850-1895* (Princeton: Princeton University Press, 1989), *passim*; Caroline Daley & Melanie Nolan (eds.), *Suffrage and Beyond: International Feminist Perspectives* (Auckland: Auckland University Press, 1994), *passim*.

⁵⁹ Lawrence Stone, *The Family, Sex and Marriage in England, 1500-1800* (London: Weidenfeld & Nicolson, 1977), pp.149-165.

necessity.⁶⁰ The Victorians eulogised marriage as an equal and loving partnership, characterised by 'love, purity and altruism'.⁶¹ Too often, however, the reality of marriage failed to live up to the ideal. Equality within marriage depended upon a husband's generosity, for upon marriage a woman lost many of her civil rights including the right to control property which she brought to or acquired during the marriage.⁶² Despite the decline of the patriarchal household and the gradual shift from property-based marital unions to love matches, marital law remained based upon an aristocratic, patriarchal code which treated wives as the property of their husbands. A married woman 'had no legal rights to her property, her earnings, her freedom of movement, her conscience, her body, or her children: all resided in her husband'.⁶³

The rise of the idea of companionate marriage encouraged middle-class women already inspired by liberal and democratic ideologies to demand the legal recognition of male and female equality in marriage. From the 1850s feminists increasingly highlighted the gap between the ideal and reality of marriage. They campaigned for reform of marital property laws and promoted increased recognition of wives' rights to bodily integrity and sexual autonomy within marriage. Wife-beating, conjugal rights and marital rape all became

⁶⁰ For detailed discussions of the rise of romantic or companionate marriage see Stone, Chapter VIII; Edward Shorter, *The Making of the Modern Family* (New York: Basic Books, 1975), pp.5, 79; Randolph Trumbach, *The Rise of the Egalitarian Family: Aristocratic Kinship and Domestic Relations in Eighteenth-Century England* (New York/San Francisco/London: Academic Press, 1978), pp.97-113; Judith Schneid Lewis, *In the Family Way: Childbearing in the British Aristocracy, 1760-1860* (New Brunswick: Rutgers University Press, 1986), Chapter I.

⁶¹ Kent, p.80.

⁶² For a full discussion of married women's rights see Shanley, pp.3-21.

⁶³ Kent, p.27.

significant issues during the latter decades of the nineteenth century.⁶⁴ Debate over divorce highlighted the issue of equality in marriage. The sexual double standard had become enshrined in a divorce law which allowed a husband to divorce his wife on the sole ground that she had committed adultery but which required a wife to prove her husband guilty of one of a number of offences in addition to adultery. Feminist demands for legal recognition of equality in marriage, together with social purity imperatives, resulted in a full-scale assault upon the sexual double standard in the divorce law during the 1880s and 1890s.

A fundamental rejection of male sexual power over women lay at the core of the feminist critique of society. The feminists argued that toleration of male sexual licence undermined women's status in society. The introduction of the Contagious Diseases Acts during the 1860s and the subsequent campaign for their repeal highlighted the issue for many women. Susan Kingsley Kent has argued that the repeal campaign

explicitly identified for thousands of women the socio-sexual structure set up by patriarchal society. It crystallized for women their status as sexual objects and catapulted many complacent, mild-mannered women into the public sphere to discuss a heretofore unmentionable issue.⁶⁵

Debate over prostitution led to a broader challenge to the ideology of male sexual needs: an ideology which kept wives continually pregnant and permitted widespread sexual exploitation of vulnerable girls and young women. Feminists argued that 'men's untrammelled sexuality' not only led to the sexual subordination of women, it also threatened the wellbeing of the family and the nation.⁶⁶ Feminists throughout the western world turned

⁶⁴ Shanley, pp.14, 156-188.

⁶⁵ Kent, p.9.

⁶⁶ Barbara Brookes, 'A Weakness for Strong Subjects: The Women's Movement and Sexuality', *NZJH* 27:2 (October 1993), p.143.

to the state to assist in their campaigns to redefine and recreate the dominant sexual culture of the late nineteenth century.⁶⁷ Their efforts met considerable resistance from legislators who endorsed traditional aristocratic and patriarchal ideologies. The ensuing battles between the feminist-purity brigade and their more conservative opponents lay at the crux of the late nineteenth century state regulation of sexuality.

V

Christian moral precepts, as interpreted by the Church of England, provided the basis of British sex legislation. However, during the nineteenth century a rising tide of secular thought increasingly challenged the religious basis of much state legislation, including laws dealing with divorce, birth control and incest. The eighteenth-century Enlightenment with its emphasis on reason and science had led to increased questioning of Biblical and Church authority.⁶⁸ Difficulties in reconciling science with religious teachings became increasingly apparent during the following century. New discoveries and developments in the geological and biological sciences - in particular, the development of the theory of evolution - undermined religious explanations of the origins of life on earth.⁶⁹ Eighteenth and early nineteenth-century philosophical developments similarly challenged Biblical authority on questions of ethics and morality. The doctrine of utilitarianism, for example, maintained that morality existed independently of religion. Moral truths, it was suggested, were 'strong enough in their own evidence for mankind to believe in them, although without any higher

⁶⁷ Kent, p.3; Brookes, p.142.

⁶⁸ Royle, *Infidels*, pp.9-23.

⁶⁹ See B.M.G. Reardon, *Religious Thought in the Victorian Age: A Survey from Coleridge to Gore* (London & New York: Longman, 1995), pp.210-23; and Royle, *Infidels*, pp.15-21.

origin than "wise and noble hearts".⁷⁰ However, the rise of science did not wholly undercut religious explanations of the world. Many Christians incorporated scientific explanations within a fundamentally religious framework. For many believers, God could be seen at work through science.⁷¹

Irreligious sentiment had strong roots in the old working-class radical political tradition. Radical thinkers saw a connection between the 'agents of unjust authority' - priests, kings, armies and landowners. To 'attack "priestly thinking" in the name of science and progress', radicals argued, would not only 'liberate the minds of men', but 'shake government to its very foundations'.⁷² Drawing upon Enlightenment thought and the new biblical criticism, the radical movement spawned the organised secular movement of the nineteenth century.⁷³ 'Freethought' organisations, formed to protect the rights of those who espoused radical or secular philosophies, appeared in England and Scotland during the 1820s. During the 1850s and 1860s G.J. Holyoake and Charles Bradlaugh united many of these societies under their respective umbrella organisations: the Secular Society (1851) and the National Secular Society (1866). Similar organisations also emerged in continental Europe, in America and Australasia.⁷⁴ The Secularists attributed the evils of contemporary society to

⁷⁰ Reardon, p.205. See also Royle, *Infidels*, p.22.

⁷¹ Reardon, pp.216, 237-265.

⁷² Susan Budd, *Varieties of Unbelief: Atheists and Agnostics in English Society, 1850-1960* (London: Heinemann, 1977), p.12.

⁷³ *Ibid.*, p.10.

⁷⁴ Royle, *Infidels*, pp.35, 170-175, 284, and *Radicals, Secularists and Republicans: Popular Freethought in Britain, 1866-1915* (Manchester: Manchester University Press, 1980), pp.77-84. See P.J. Lineham, 'Freethinkers in Nineteenth-Century New Zealand, *NZJH* 19:1 (April 1985) for a discussion of the secular movement in New Zealand. For discussion of the Australian movement see F.B. Smith, 'Religion and Freethought in Melbourne, 1870-1890' (M.A. Thesis, University of Melbourne, 1960).

'the baneful effects of religion'.⁷⁵ They campaigned 'for the creation of a secular, pluralistic, open society in place of one based on a closed, aristocratic constitution and the Christian ideology'.⁷⁶ In Britain, Secularists launched campaigns to secure the rights of illegitimate children and to reform obscenity legislation which restricted the publication of birth control information.⁷⁷ While the New Zealand secularists did not campaign in a similarly organised fashion for specific legislative reforms, individual free-thinkers in Parliament used secular arguments to support a range of legislative amendments. Freethought influence was particularly apparent in debates concerning divorce reform and the prohibited degrees of marriage.⁷⁸

VI

The rise of the doctors played an even more important role in shaping sex legislation. The rising prestige and power of the medical profession during the nineteenth and early twentieth centuries owed much to doctors' fervent embrace of science. As Susan Kingsley Kent has argued,

Confidence in science as the basis for virtually all knowledge permeated [the] Victorian mentality; physicians enveloped themselves in the scientific mantle as they sought to establish themselves as the "supreme authority" in sexual matters.⁷⁹

Doctors gained credibility and authority by emphasising the scientific basis of their knowledge and by constructing themselves as impartial experts upon all matters to do with

⁷⁵ Royle, *Radicals*, p.x.

⁷⁶ Royle, *Infidels*, p.4.

⁷⁷ See Budd, Chapter III, and Royle, *Radicals*, Chapter XIII.

⁷⁸ See Chapter II, pp.52-54; Chapter III, pp.97-98.

⁷⁹ Kent, p.114.

the human body.⁸⁰ In promoting scientific over religious authority the doctors increasingly positioned themselves as the new arbiters of morality and sexual 'normality'.

The doctors had not played a major role in the early public health movement. The movement had drawn upon the skills and energy of a wide range of individuals including lawyers, clergymen and lay social reformers motivated by evangelical or utilitarian philosophies. Public health reformers did not automatically seek medical solutions to problems of disease in this period. Indeed, the most prominent sanitary reformer, Edwin Chadwick, a Benthamite lawyer, considered medical accounts of the pathology of disease of marginal interest. Chadwick favoured engineering-based solutions to disease, such as improvements in water-supply and sewerage disposal.

The medical profession did not play a prominent part in the shaping of state responses to public health until the latter decades of the century.⁸¹ For much of the nineteenth century the doctors remained a diverse and divided group with little influence upon the state or upon their patients. However, their growing adherence to scientific medicine, together with internal and legislative restructuring of medical practice, propelled the doctors to a position of substantial influence by the early decades of the twentieth century. During the early nineteenth century a new group of influential medical practitioners emerged from the traditional hierarchy of orders of physicians, surgeons, apothecaries and 'others'.⁸² The

⁸⁰ Barbara Ehrenreich & Deirdre English, *For Her Own Good: 150 Years of the Experts' Advice to Women* (London: Pluto Press, 1979), pp.62-64.

⁸¹ Lawrence, p.49-50; Porter, pp.59-60.

⁸² The university-trained physicians concentrated on diagnosis and advice-giving. Surgeons ranked directly below physicians and specialised in conditions requiring manual treatment including broken bones and external wounds. The apprentice-trained apothecaries primarily dispensed the drugs prescribed by the physicians: Lawrence, pp.8-16; Porter,

`surgeon apothecaries', later known as `general practitioners', combined broad practical experience with university training. The new practitioners increasingly challenged the privileges and authority claimed by the physicians and surgeons. They also bitterly criticised the great multitude of `irregular' practitioners with whom they competed for business: the bone-setters, unqualified homeopaths, medical botanists, itinerants and the `quacks' who lacked the clinical and intellectual training prized by the licensed, self-defined `orthodox' practitioners.⁸³

The general practitioners became increasingly vocal in the course of the nineteenth century in advancing their claims to medical expertise, authority and status. Organising themselves into local societies, they urged the state to assist in the establishment of a closed single profession `founded on a single qualification requiring joint education in medicine and surgery'.⁸⁴ In 1830 dissatisfied British general practitioners formed the British Medical Association to lobby for legislative reform. In 1858 they finally persuaded the Government to enact legislation creating a single, distinct medical profession. The 1858 Medical Act provided for the creation of a public medical register of names of all legally recognised practitioners. The register did not distinguish between the old-guard physicians or surgeons and the general practitioners but it explicitly excluded the irregular healers. By defining the

Chapter IV. See also I. Loudon, *Medical Care and the General Practitioner, 1750-1850* (Oxford: Clarendon Press, 1986), pp.11-22, 130-151.

⁸³ Lawrence, pp.14-16.

⁸⁴ *Ibid.*, pp.27-28, 32. `Regular' doctors in America similarly promoted medical professionalism and restrictive licensing legislation during the early 1800s. However, they suffered a major setback during the 1830s with the rise of the popular health movement. For a discussion of American experiences, see Ehrenreich & English, Chapters II & III.

doctors against a common 'other', the Act fostered unity among the long-divided orthodox practitioners.⁸⁵

The 1858 Medical Act also provided legal recognition of the growing links between orthodox medicine and the state in Britain.⁸⁶ During the eighteenth century care of the sick was generally considered the responsibility of individuals, families, voluntary societies or the local parish. The state laid down certain directives regarding proper processes but 'such matters ... were not, and were not considered to be, the day-to-day concern of the state'.⁸⁷ However, the rise of the public health movement led to the state employment of doctors in a wide range of capacities and institutions. The Public Health Act of 1848 empowered urban authorities to employ licensed medical men as Medical Officers of Health to compile statistics and monitor public health hazards.⁸⁸ 'By the 1850s', it is argued, 'orthodox medicine had become a significant feature of the machinery of the Victorian state': licensed medical practitioners served as Poor Law medical officers, factory medical inspectors, vaccinators, and army and navy doctors. From the 1860s, central government increasingly turned to professional medical men to advise upon and administer state sanitary reform initiatives.⁸⁹

Similar connections between the state and the medical profession developed in New Zealand and the other colonies, albeit at a slower pace.⁹⁰ The New Zealand Government

⁸⁵ Porter, pp.50-51.

⁸⁶ Lawrence, p.56.

⁸⁷ *Ibid.*, p.7.

⁸⁸ *Ibid.*, p.48.

⁸⁹ *Ibid.*, pp.55, 61-62.

⁹⁰ See Michael Belgrave, 'Medicine and the Rise of the Health Professions', in Linda Bryder (ed.), *A Healthy Country: Essays on the Social History of Medicine in New Zealand* (Wellington: Bridget Williams Books, 1991), pp.9-16; Dow, Chapters I & II.

introduced national medical registration based upon the British model in 1867 with the similar intention of excluding the irregular practitioners. Although New Zealand medical practitioners remained a diverse and divided group throughout the nineteenth century the formation of the New Zealand Medical Association in 1886 and the establishment of the Department of Public Health in 1900 encouraged greater unity within the profession and fostered stronger links between the state and orthodox doctors.⁹¹

The increased state employment of doctors contributed to a gradual rise in the prestige of the medical profession. Together with the state's recognition of a single medical profession, state employment also gave greater legitimacy to doctors' claims to speak with authority on all matters to do with public health and well-being. Increased reliance upon the medical profession on sexual questions had a major impact upon the state regulation of sexuality. Politicians, purity reformers and feminists increasingly turned to medical authorities to support their opinions on questions relating to prostitution, censorship and sexual crime. The rise of the medical profession and the medicalisation of sexuality proved particularly significant in the shaping of state responses to sexual problems in the early twentieth century.

VII

The surge of debate over sexual issues in the New Zealand Parliament between 1880 and 1925 formed part of an international trend towards increased state intervention in citizens' personal lives. Rapid social changes encouraged intense examination of issues relating to

⁹¹ Michael Belgrave, '"Medical Men" and "Lady Doctors": The Making of a New Zealand Profession, 1867-1941' (Ph.D. Thesis, Victoria University of Wellington, 1985), pp.39-48, 58-70. See also Dow, pp.34-48.

national stability and security. The centrality of sex to questions of moral and social order led to its rise as a core political topic in this period.

Social reformers throughout the western world, whether inspired by evangelical, secular or feminist ideologies increasingly turned to the state to enforce their own moral codes. However, whilst many politicians heeded calls for moral reform, others contested the standards set by the reformers or challenged the validity of their demands. Ideological battles within legislatures over sex legislation reflected battles in the wider society to define appropriate standards of conduct and ensure their enforcement. Motivated by a range of competing, conflicting and sometimes co-operating ideologies and discourses, politicians, purity reformers, feminists and doctors struggled to shape sex legislation to reflect their own values and beliefs.

The battles waged by adherents of competing and conflicting discourses fundamentally shaped the state's regulation of sexuality between 1880 and 1925. The following chapters focus upon the interaction and conflict of four major forces on the field of sexuality - feminist-purity discourse, traditional patriarchal discourse, secularism and medical/scientific discourse. The history of state regulation of sexuality in New Zealand between 1880 and 1925 is very much an account of the interactions between these forces.

CHAPTER II

ADULTERY, INSANITY AND DIVORCE
CHALLENGING THE SANCTITY OF MARRIAGE

In 1891, the Auckland *Star* published a spirited condemnation of the colony's divorce laws. Painting a highly critical description of the existing legislation, the writer argued that the law unfairly disadvantaged women.

A man may procure a divorce if he can prove that his wife has been guilty of adultery. A wife on the other hand, may adduce the clearest proof that her husband is habitually guilty of adulterous acts, but she must also prove that she has been the victim of cruelty. There is something ironical in this view of things. The husband's case need not be strengthened by informing the Court that his wife is accustomed to enforce her arguments with flat-irons, or to send kitchen candlesticks whizzing about his ears at inconvenient times. But, on the other hand, if a wife proves that she is constantly deserted for a shameless rival, that she is constantly taunted and insulted till life becomes a burden, she is still called on for evidences of cruelty. Her chances increase if she has been kicked or maimed by a drunken brute, although even in cases of brutal assault there seems to be the widest latitude in the judicial mind as to what constitutes cruelty. But unfaithful husbands do not always kick their wives. No rational reason why the sexes should not in this respect be treated on an equal footing can be advanced, unless it is premised that for some unexplained reason man has a prescriptive right to offend. The law of divorce ... is a relic of a barbarous age, and the pressure of public opinion must speedily cause unequal provisions to be expunged from the statute.¹

The article summed up the views of a growing number of colonial politicians and feminists. As the *Star* pointed out, under the 1867 Divorce Act a husband could divorce his wife on the sole ground that the wife had committed adultery. A wife, however, could only obtain a divorce if she could prove that her husband had committed aggravated adultery: adultery accompanied by physical cruelty, bigamy, rape, sodomy, bestiality or incest. Defenders of

¹ Quoted by divorce reformer John Joyce in the House of Representatives on 15 July 1891: *NZPD*, 72, 1891, p.216.

the sexual double standard maintained that the law rightly reflected biological and social realities which set different standards of behaviour for men and women. However, from the late 1870s reform-minded individuals increasingly challenged the unequal provisions of the 1867 Act.² In addition to criticising the distinction made between male and female adultery, a number of critics also argued in favour of significantly extending the range of grounds for divorce. They argued that women and men tied to drunken, murderous, insane or runaway spouses ought to be able to break free from their unfortunate liaisons in order to form new and more satisfactory unions. As it stood, the restrictive nature of the legislation forced many unhappy women and men to remain with partners whom they could not love, trust or respect, and who threatened the safety and wellbeing of themselves and their children.

Divorce reform was a highly contentious issue for late nineteenth and early twentieth-century politicians. Politicians and the public alike generally agreed that marriage was the foundation of a stable society. Many feared that liberalisation of the divorce laws would devalue the institution of marriage, undermine the family and damage society as a whole. Debate over proposals to extend the grounds for divorce forced politicians and reformers to examine closely the nature of the marriage relationship and to justify their stances accordingly. Debates within and outside Parliament exposed an on-going battle between divorce reformers and their opponents to define not only the nature of marriage but the nature of male and female sexual and social roles. Politicians' beliefs about male and female

² Discussion of New Zealand's divorce history can be found in Roderick Phillips, *Divorce in New Zealand: A Social History* (Auckland: Oxford University Press, 1981); Diane J. Laws, '"Opening the Floodgates": Changes in New Zealand Divorce Legislation 1867-1922' (B.A. (Hons.) Research Essay, University of Otago, 1980); and Wade McKenzie Mansell, 'The History of the Development of the Grounds for Divorce in New Zealand' (LL.M. Thesis, Victoria University of Wellington, 1970).

sexuality and the place of sex in marriage shaped their responses to divorce legislation. Attitudes to marital sexuality and state interference in marital unions altered significantly in this period. The divorce debates of the latter 1800s and early 1900s provide an opportunity to chart these changes and identify the social forces underpinning the arguments of both the reformers and their opponents.

I

New Zealand's colonial administrators based the colony's marital legislation on English civil law which was itself based upon Anglican religious doctrines.³ Marriage, generally considered a personal and secular affair during the early middle ages, had largely come under the control of the Church of England by the sixteenth and seventeenth centuries.⁴

Two beliefs were of particular importance to the Church: firstly, the doctrine of the indissolubility of marriage; and secondly, belief in the sanctity of marriage.⁵ The biblical scripture, 'What God hath joined together let no man put asunder' concisely summarised the Anglican position.⁶ The Anglican Book of Common Prayer provided a more comprehensive picture:

Matrimony was ordained for three objects: firstly, for the procreation of children; secondly to avoid the sin of fornication; thirdly, for the mutual

³ For details of English marriage law see Joan Perkin, *Women and Marriage in Nineteenth-Century England* (London: Routledge, 1989); Mary Lyndon Shanley, *Feminism, Marriage and the Law in Victorian England, 1850-1895* (Princeton: Princeton University Press, 1989); A. James Hammerton, *Cruelty and Companionship: Conflict in Nineteenth-Century Married Life* (London/New York: Routledge, 1992); Lawrence Stone, *The Family, Sex and Marriage in England 1500-1800* (London: Weidenfeld & Nicolson, 1977) and *The Road To Divorce: England 1830-1987* (Oxford University Press, 1990); and Stephen Parker, *Informal Marriage, Cohabitation and the Law 1750-1989* (New York: St Martin's Press, 1990).

⁴ See Parker, pp.12-13; Perkin, p.20; Stone, *Road to Divorce*, pp.51-58.

⁵ Roderick Phillips, *Putting Asunder: A History of Divorce in Western Society* (Cambridge: Cambridge University Press, 1988), pp.107-110.

⁶ Mark 10:9

society, help and comfort that the one partner ought to have of the other, both in prosperity and in adversity.⁷

Anglican marriage vows further defined the roles and relationship of husband and wife. In an explicit and public acknowledgment of her subordinate role in the new relationship, a bride promised to obey her husband. In return, the bridegroom pledged himself to provide for his wife.⁸

By the mid-nineteenth century the state regulated many aspects of marriage formerly dealt with by the Church. The registration of marriages, a function previously carried out by the Church, became a function of the state.⁹ Marriage's significance for the transmission of property led to the involvement of the common law and the law of equity in the regulation of the contract.¹⁰ The state had the ultimate authority to decide whether a marriage was legally binding, invalid or entitled to dissolution; provision had been made for civil marriage; statute law specified minimum ages of marriage for males and females; incest and other proscriptions limited the range of potential marriage partners; and common law and the law of equity defined husbands' and wives' legal rights as married persons.¹¹ In New Zealand,

⁷ Perkin, p.20.

⁸ *Ibid.*

⁹ Lord Hardwicke's Marriage Act of 1753 established more formal and rigorous grounds for marriage. The Act required that unions be celebrated by an Anglican priest according to the Anglican liturgy and that all marriages be publicly registered: Perkin, p.21; Parker, pp.29-47. Although the state recognised the role of the church in sanctioning and performing marriages, the 1753 Act clearly demonstrated the State's assumption of the 'right to determine what constituted a valid marriage': Perkin, p.22. The church might have the power to legitimise and bless unions, but this authority was one granted by the state.

¹⁰ Stone, *Road to Divorce*, pp.24-26.

¹¹ The Marriage Act of 1836 weakened the Church of England's virtual monopoly on the celebration of marriages by making provision for licensed Nonconformist and Catholic church weddings. The Act of 1836 also established the right to marry according to a civil ceremony in a Registry Office, re-emphasising the state's paramount authority to sanction marriages: Parker, pp.48-49; Perkin, p.22.

marriage ordinances issued in the 1840s and legislation enacted in 1854 and 1880 largely reproduced English marital law.¹²

Civil marital legislation incorporated Anglican religious views. Widespread belief in the sanctity of marriage and in the desirability of unions lasting 'until death do us part' significantly inhibited the development of civil divorce law. Although parliamentary divorce - divorce via an act of Parliament - became possible after 1670 for men sufficiently rich and well connected to have an act passed on their behalf, divorce remained an impossibility for the vast majority of individuals whose marriages caused them grief.¹³ Wronged wives were at a particular disadvantage. Until the early 1800s the sole ground for divorce was female adultery.¹⁴ Between 1800 and 1857 a small number of women managed to breach the male monopoly on divorce. However, Parliament required that the petitioning wife prove her husband guilty of one of a number of criminal offences in addition to adultery.¹⁵ Divorce remained the prerogative of rich and influential men.

¹² See G.A. Wood, 'Church and State in New Zealand in the 1850s', *Journal of Religious History* 8:3 (June 1975), pp.260-264, regarding early New Zealand marriage ordinances. To a limited extent, New Zealand legislators tailored marriage regulations to the colonial context. The New Zealand Marriage Act of 1854 acknowledged the state's lack of power over Maori unions and recognised the right of Maori, unlike Europeans, to marry where and with whom they wished without requiring a licence. The state did not register Maori marriages contracted outside the Marriage Act until 1909. See the *New Zealand Yearbook*, 1925, p.134 and Stevan Eldred-Grigg, *Pleasures of the Flesh: Sex and Drugs in Colonial New Zealand, 1840-1915* (Wellington: A.H. & A.W. Reed, 1984), p.16. For a detailed treatment of Maori marriage and sexual customs in the pre-european and early colonial periods see Bruce Biggs, *Maori Marriage: An Essay in Reconstruction* (Wellington: A.H. & A.W. Reed Ltd, 1970).

¹³ See Stone, *Road to Divorce*, Chapter X, for a detailed discussion of the development and practice of parliamentary divorce in England.

¹⁴ *Ibid.*, pp.357, 360-362.

¹⁵ Perkin, p.23. On the consequences of divorce for aristocratic women, see Stone, *Road to Divorce*, pp.339-346; and Judith Schneid Lewis, *In the Family Way: Childbearing in the British Aristocracy, 1760-1860* (New Brunswick, New Jersey: Rutgers University Press, 1986), pp.40-45.

Although some theologians argued that the New Testament sanctioned divorce on the grounds of a wife's adultery, parliamentary divorce and its double standard owed more to property considerations than to religious beliefs.¹⁶ Parliamentary divorce arose out of a desire to protect the patrilineal descent of property in the nobility. The law assumed that all children born to a married couple had been fathered by the husband.¹⁷ Wifely adultery could all too easily result in another man's child inheriting the family estate and titles. A husband's adultery, on the other hand, did not threaten the property rights of the wife's family. It was the adulterous wife, not the philandering husband, who threatened family harmony and the social order. Lawmakers consequently considered the husband's infidelity a lesser offence, one that ought not result in the dissolution of the marriage.¹⁸ Whilst the state was prepared to allow cuckolded rich men to rid themselves of adulterous wives, it proved highly reluctant to relax the bonds of marriage on any other ground. Adultery remained the sole ground for divorce until the late 1890s in New Zealand and until the 1920s in England.

The law also reflected the view that social order relied upon the maintenance of patriarchal authority within marriage.¹⁹ The submission of wife to husband contained in the Anglican marriage service reappeared in the civil law doctrine of coverture. The eminent eighteenth-century jurist Sir William Blackstone described the doctrine in his *Commentaries on the Laws of England*:

the husband and wife are one person in law; that is, the very being or legal existence of a woman is suspended during marriage, or at least incorporated

¹⁶ Stone, *Road to Divorce*, pp.303, 312. *Matthew* 5:32 and 19:9 could be used in support of divorce on the ground of adultery. See Phillips, *Putting Asunder*, pp.17-18, for a discussion of adultery and divorce as discussed in the New Testament.

¹⁷ Perkin, p.2.

¹⁸ Stone, *Road to Divorce*, pp.7, 242-43; Perkin, p.24; Lewis, p.227.

¹⁹ Stone, *Road to Divorce*, pp.12-13.

and consolidated into that of the husband, under whose wing, protection and cover she performs everything.²⁰

Blackstone's summation held true for over a century, as applicable to colonial New Zealand as it was to England. In effect, under coverture a woman lost her status as an independent legal and economic being when she married. She became a *feme covert*, a hidden person, sunk into and merged with the personality of her husband'.²¹ Her future earnings and the bulk of her property fell under her husband's control.²² Any children born to the marriage belonged to the husband. The mother's rights over the children after his death depended upon her husband's wishes as expressed in his will. Should a woman leave her husband, she could take neither the children nor any property.²³ Married women could neither make wills nor institute suits in court without their husbands' consent and they could not be prosecuted for any crime committed in their husband's presence. The law assumed the wife acted as the agent of the husband, not as an autonomous individual.²⁴ The doctrine of coverture had serious implications for the relationships between husbands and wives. It formalised and

²⁰ Jane Lewis, *Women in England 1870-1950: Sexual Divisions and Social Change* (Brighton: Wheatsheaf, 1984), p.119. See Perkin, pp.10-31, and Shanley, *passim*, for detailed accounts of women's legal status under English law, pp.10-31. On the contractual nature of marriage, see Carole Pateman, *The Sexual Contract* (Cambridge: Polity Press, 1994), Chapters V and VI.

²¹ Perkin, p.2; Bettina Bradbury, 'From Civil Death to Separate Property: Changes in the Legal Rights of Married Women in Nineteenth-Century New Zealand', *NZJH* 29:1 (April 1995), p.42.

²² There were a few exceptions to this general transfer of property rights from bride to groom. Wives retained ownership of property held in trust for them by relatives and friends, real property (usually land) and clothing and personal ornaments brought to the marriage: Perkin, p.2; Bradbury, p.42. In New Zealand the state partly acknowledged Maori custom concerning wives' property rights. While European women forfeited most of their property rights to their husbands after marriage, Maori women married to Maori men retained control over their property. However, if a Maori woman's land passed through the Land Court, or if she married a European, her property became subject to European law: Bradbury, pp.44-46.

²³ Stone, *The Family, Sex and Marriage*, p.332.

²⁴ Bradbury, pp.42-43; Perkin, p.2.

legitimated a husband's authority over his wife and it explicitly denied married women personal autonomy and the status of fully responsible individuals.

The doctrine also had major implications for marital sexual relations.²⁵ In 1778, English judge Lord Hale declared that

the husband cannot be guilty of a rape committed by himself upon his lawful wife, for by their mutual matrimonial consent and contract the wife hath given up herself in this kind unto her husband, which she cannot retract.²⁶

Lord Hale's dictum remained in law for most of the twentieth century, encapsulated in legislation which explicitly excluded forcible sexual intercourse within marriage from the statutory definition of rape.²⁷ 'Rape' was the act of a man 'having carnal knowledge of a woman who is not his wife' without her consent.²⁸ Not only did a woman lose her rights to her property on marriage, she lost rights to her person. Her body, within certain limits, was her husband's.²⁹

During the nineteenth century increasing numbers of concerned individuals began to voice serious criticisms of both the divorce law and the unequal legal status of married women. A major shift in expectations of marriage over the previous century and the rise of secular and individualistic ideologies resulted in growing dissatisfaction with the marriage

²⁵ Sexual intercourse sealed the marriage contract. See Pateman, p.164.

²⁶ Sir M. Hale, *The History of the Pleas of the Crown* (London: Sollom Emlyn, 1778), vol.I, ch. LVIII, p.628, cited in Pateman, p.123.

²⁷ It was not until 1985 that the rape of a woman by her husband was recognised as a crime in New Zealand law: Greg Newbold, *Crime and Deviance* (Auckland: Oxford University Press, 1992), pp.95-96.

²⁸ Criminal Code Act, *NZ Statutes*, 1893, s. 191.

²⁹ The law placed some restrictions on husbands' use and abuse of their wives' bodies. Sodomy and excessive cruelty (combined with a husband's adultery) constituted grounds for divorce: Pearsall, p.174. Although much domestic physical abuse was tolerated by the courts during the nineteenth century, husbands could not beat or torture their wives with impunity: Hammerton, *passim*.

laws. During the seventeenth century marriage had largely been viewed as an economic partnership and, for the aristocracy, as a mechanism for transferring property between families.³⁰ An individual's choice of marriage partner had major implications for the social, political and economic fortunes of the wider family unit. In order to ensure that children contracted alliances beneficial to all, parents frequently arranged the marriages of their offspring. However, from the mid-1700s arranged marriages increasingly gave way to companionate marriages based on romantic ideals.³¹ Love and affection had always had a place in marriage but these qualities had frequently fallen a poor second to more material considerations.³² A 'lukewarm respect and regard for a proposed spouse' had been considered sufficient in the 1760s, but by the 1860s young men and women expected to feel a deeper emotional attachment to their future wife or husband.³³ Although family interests and economic considerations remained significant, men and women increasingly focused on first satisfying their own emotional needs when selecting a marriage partner. Personal happiness rather than duty to the family or lineage increasingly became the basis for marriage.³⁴

³⁰ Stone, *Road to Divorce*, p.6.

³¹ See Chapter I, pp.21-23. For full discussions of the development of companionate marriage see Randolph Trumbach, *The Rise of the Egalitarian Family: Aristocratic Kinship and Domestic Relations in Eighteenth-Century England* (New York/San Francisco/London: Academic Press, 1978), Chapter II; Judith Lewis, Chapter I; Stone, *Road to Divorce*, *passim*, and *The Family, Sex and Marriage*, Chapter VIII. For an American perspective see Carl Degler, *At Odds: Women and the Family in America from the Revolution to the Present* (New York: Oxford University Press, 1981) and John D'Emilio and Estelle Freedman, *Intimate Matters: A History of Sexuality in America* (New York: Harper & Row, 1988).

³² Stone, *Road to Divorce*, p.6.

³³ Judith Lewis, pp.18-19, 31.

³⁴ Jeffrey Weeks, *Sex, Politics and Society: The Regulation of Sexuality Since 1800* (London & New York: Longman, 1994), p.26; Stone, *The Family, Sex and Marriage*, p.656. See John R. Gillis, *For Better, For Worse: British Marriages, 1600 to the Present* (New York, Oxford: Oxford University Press, 1985) for a discussion of the experience of marriage for couples and communities in England.

The rise of companionate marriage has been seen as part of a broader ideological shift 'from a mental world based on concepts of patriarchy, hierarchy, honour, and shame, to one based more on the commercial values of the market-place and individualistic ideas about freedom of choice'.³⁵ The rise of individualistic, liberal and egalitarian philosophies during the nineteenth century encouraged a reassessment of women's status in public and domestic life. Educated men and women increasingly supported notions of women's personal autonomy and rights as individuals and citizens.³⁶ Inspired by egalitarian ideals and fully supportive of the new ideology of companionate marriage, middle-class women and their male supporters began to demand legal recognition of women's status as autonomous beings both within and outside the family.³⁷ In New Zealand, concerned women and men discussed and debated the issues of women's political and legal disabilities during the 1860s and 1870s.³⁸ Mary Ann Müller issued an *Appeal to the Men of New Zealand* in 1869 in which she stated the case for women's suffrage.³⁹ Müller is also credited with initiating and shaping the Married Women's Property Protection Acts of 1860 and 1870 which extended wives' rights over property.⁴⁰ During the 1870s, writer and public speaker Mary Ann Colclough,

³⁵ Stone, *Road to Divorce*, p.23.

³⁶ See Mary Shanley, pp.10-14, regarding liberal political theory and feminism. For discussion of English criticisms of marriage see Lucy Bland, *Banishing the Beast: English Feminism and Sexual Morality, 1885-1914* (London: Penguin, 1995), Chapter IV; Perkin, Chapter X; Mary Poovey, *Uneven Developments: The Ideological Work of Gender in Mid-Victorian England* (London: Virago Press, 1989), Chapter III; and Hammerton, Chapters III and V. See Judith Devaliant, *Kate Sheppard: A Biography* (Auckland: Penguin Books, 1992), regarding use made of English material by Kate Sheppard in New Zealand in the 1890s, p.154.

³⁷ Susan Kingsley Kent, *Sex and Suffrage in Britain 1860-1914* (Princeton: Princeton University Press, 1987), pp.26-27.

³⁸ Bradbury, p.54.

³⁹ Müller's appeal is reproduced in Margaret Lovell-Smith's *The Woman Question: Writings by Women who Won the Vote* (Auckland: New Women's Press, 1992), pp.59-65.

alias 'Polly Plum', publicly criticised many aspects of marriage, including the presence of the vow of obedience in the marriage service.⁴¹ Müller and Colclough, and the feminists who followed them demanded that women be treated in law not as mere appendages of men, but as autonomous and rational beings in their own right.

Very real social problems also encouraged a reassessment of wives' legal rights. Changes made to married women's property rights in New Zealand in 1860 and 1870 came about largely in response to the widespread failure of husbands to support and maintain their wives. Parliament enacted the 1860 Married Women's Property Protection Act in order to ease the plight of deserted wives whose husbands periodically returned to avail themselves of whatever money or property their wives had managed to accumulate in their absence. Desertion was more widespread in colonial New Zealand than in Britain and the Act of 1860 preceded similar legislative reforms in Britain.⁴² Wife-desertion remained a significant problem in New Zealand throughout the 1880s and 1890s. Problem drinking, a prominent feature of nineteenth-century colonial societies, similarly disrupted marital and family life.⁴³

⁴⁰ Aorewa McLeod, 'Mary Ann Müller' in Charlotte Macdonald *et al* (eds.), *The Book of New Zealand Women* (Wellington: Bridget Williams Books, 1991), pp.461-64; Raewyn Dalziel, 'Mary Ann Müller' in Claudia Orange (gen. ed.), *The Suffragists* (Wellington: Bridget Williams Books/Dictionary of NZ Biography, 1993), pp.101-03. Dalziel, p.101, suggests that Müller's personal experience led to her actions. Müller allegedly left her first husband because of his cruelty.

⁴¹ Sandra Coney, 'Mary Ann Colclough', in S. Coney (ed.), *Standing in the Sunshine: A History of New Zealand Women Since They Won the Vote* (Auckland: Penguin Books, 1993), p.18. See also Judith Malone, 'Mary Ann Colclough' in Orange, pp.47-49.

⁴² Bradbury, p.51; Shanley, pp.67-78. For a discussion of the New Zealand State's response to wife-desertion in the nineteenth century see Carolyn Bayvel, 'Destitution, Desertion and Illegitimacy' (B.A. (Hons.) Research Essay, University of Otago, 1994), *passim*, and Margaret Tennant, *Paupers and Providers: Charitable Aid in New Zealand* (Wellington: Allen & Unwin/Historical Branch, Department of Internal Affairs, 1989), pp.108-12.

⁴³ Grimshaw, p.21.

Drunken husbands who abused their wives and wasted the families' earnings on alcohol could be more of a problem than those who simply abandoned their wives and children.⁴⁴ In response to continued concerns over the plight of abused or exploited wives, Parliament passed a further Married Women's Property Act in 1884. The legislation allowed married women to retain ownership of property they held at the time of marriage or which they inherited, received as a gift or earned during the marriage. The Act significantly undermined the traditional concept of legal unity of husband and wife. Although it did not eliminate coverture, it enhanced wives' status as 'real legal beings' in their own right.⁴⁵

The impetus for reform of New Zealand's marital laws, stimulated by ideological developments and immediate social problems, was further strengthened by demographic change. From the 1880s, signs of a slow but steady transition from a rough and ready colonial society to a more settled community are apparent. Population statistics for the latter decades of the century reveal a significant evening up of the sex ratio. In 1861 there were 62.16 females to every 100 males in the colony. By 1881 the proportion of females to 100 males had risen to 81.72. In 1901 the number stood at 90.33 females to every 100 males.⁴⁶ Further indications of a settling down can be observed in the maturing of the age-structure and in urbanisation and economic development.⁴⁷

⁴⁴ See Frances Porter and Charlotte Macdonald (eds.), *'My Hand Will Write What My Heart Dictates': The Unsettled Lives of Women in Nineteenth-Century New Zealand As Revealed to Sisters, Family and Friends* (Auckland: Auckland University Press/Bridget Williams Books, 1996), Chapter VI, regarding the realities of failed marriage for women in nineteenth-century New Zealand.

⁴⁵ Bradbury, pp.56-57.

⁴⁶ *New Zealand Yearbook*, 1905, p.118. See Eric Olssen, 'Towards a New Society', in G.W. Rice (ed.), *The Oxford History of New Zealand* (Auckland: Oxford University Press, 1992), p.257.

⁴⁷ Olssen, 'Towards a New Society', pp.257-8.

One result of the transition from a pioneering to a settled society was the emergence of increased numbers of middle-class women eager to participate in organisations dedicated to social, moral and political reform. It was in frontier settler societies that women were most motivated to take action against alcohol and its associated social problems in order to bring about a more stable society.⁴⁸ In 1885 women concerned over the impact of alcohol upon families and the wider community, and inspired by American temperance missionaries, formed the New Zealand Women's Christian Temperance Union.⁴⁹ The Union, together with a range of other women's political and social reform organisations vigorously lobbied Parliament to amend inequitable laws and to introduce new legislation extending women's political and personal rights. The women's and social purity organisations highlighted disparities between the ideology of companionate, egalitarian marriage and the inequalities embedded in marital law. Late nineteenth-century debates over divorce reform took place within a context of intense criticism of marriage legislation and a re-ordering of gender relations. The rise of companionate marriage, together with the rise of equal-rights feminism, encouraged a major reassessment of New Zealand's divorce laws.

II

The codification of the sexual double standard in divorce law was one of the most important aspects of marriage challenged by feminists and their supporters. As previously

⁴⁸ Patricia Grimshaw, 'Women's Suffrage in New Zealand Revisited: Writing from the Margins', in Caroline Daley & Melanie Nolan (eds.), *Suffrage and Beyond: International Feminist Perspectives* (Auckland: Auckland University Press, 1994), pp.27-40.

⁴⁹ For discussion of the rise of the WCTU see Phillida Bunkle, 'The Origins of the Women's Movement in New Zealand: The Women's Christian Temperance Union, 1885-1895', in P. Bunkle & B. Hughes (eds.) *Women in New Zealand Society* (Auckland: Allen & Unwin, 1980). See also Patricia Grimshaw, *Women's Suffrage in New Zealand*, 1st publ. 1972 (Auckland: Auckland University Press, 2nd ed., 1987), pp.21-35.

stated, the 1867 Divorce and Matrimonial Causes Act permitted men to divorce their wives on the grounds of simple adultery but required petitioning wives to prove their spouses guilty of the aggravated offence. Wives could obtain a decree of judicial separation on the grounds of adultery alone. However, simple adultery on the part of the husband was insufficient in the eyes of the law to justify permanent dissolution of the marriage. Parliament amended the divorce law in 1881 to enable divorce cases to be heard in courts outside Wellington but in spite of the wishes of some parliamentarians the double standard remained intact.⁵⁰

However, change was in the air. From the mid-1880s, reform-minded politicians doggedly campaigned for the extension of the grounds for divorce and the elimination of the double standard from New Zealand's divorce legislation. Reformers sought to introduce a wide range of new grounds for divorce into matrimonial law, from simple adultery on the part of the husband to desertion, insanity of a spouse, imprisonment, separation, conviction for attempted murder of a spouse, and habitual drunkenness of wife or husband.⁵¹ Although the suggested grounds varied from year to year, the amending bills consistently incorporated a clause to make the grounds of divorce equal for women and men.

In 1885, in response to a court case involving an act 'of the most revolting character', the Minister of Justice, J.A. Tole, introduced the first of these reform Bills.⁵² Tole was outraged that a woman whose husband had committed adultery with her sister could not

⁵⁰ The amendment was made in order to give rich and poor citizens throughout New Zealand more equal access to divorce: Laws, pp.13-14. William Downie Stewart Snr. also sought to introduce desertion as grounds for divorce. Despite strong support for this clause in the House of Representatives, the more conservative Legislative Council rejected Stewart's proposal and it was not included in the amended Act: *NZPD*, 1881, 40, pp.655, 724-26. W.D. Stewart (1842-1898), born in Scotland and an active Presbyterian, was the MHR for Dunedin City 1879-81 and Dunedin West 1884-1890: *DNZB*, Vol.III, p.488.

⁵¹ *Bills Thrown Out* 1880-1898.

⁵² *NZPD*, 51, 1885, p.508.

obtain a divorce on this ground alone.⁵³ During the committee stage of proceedings, Oliver Samuel, a fervent advocate of divorce liberalisation, sought to add imprisonment for seven years to the Bill as grounds for divorce.⁵⁴ However, other members less enamoured of reform thwarted both initiatives, preventing the amended Bill from securing a third reading. Two years later, prominent Dunedin businessman and politician W.H. Reynolds introduced a more extensive bill into the Legislative Council.⁵⁵ Reynolds' Bill extended the grounds of divorce to cover adultery of wife or husband, desertion for over seven years, three years confinement of the respondent in an asylum and five years imprisonment of the respondent. Strong resistance saw Reynolds' bill also fail.

Opponents cited a wide range of reasons why the proposed reforms were unacceptable. Dr Morgan Stanislaus Grace argued that there were no English legal precedents for the proposed changes: the colony, he declared, should avoid creating laws which conflicted with those of England.⁵⁶ Grace ignored the precedent of Scottish law which for many years had given women equal access to divorce.⁵⁷ Lawyer and Councillor Joseph Shephard warned that Reynold's Bill would establish 'a system of "consecutive" polygamy in New Zealand'.⁵⁸ Councillor P.A. Buckley, a staunch Catholic, argued that divorce sapped the foundations of society, and that reform was neither needed nor wanted by the public at large.⁵⁹

⁵³ *Ibid.*, p.510. See Chapter III, p.87, regarding the Catholic Tole's motivation for introducing the Bill.

⁵⁴ *NZPD*, 53, 1885, p.216; *NZPD*, 51, 1885, p.511.

⁵⁵ *NZPD*, 57, 1887, p.62.

⁵⁶ *Ibid.*, p.86.

⁵⁷ Phillips, *Putting Asunder*, p.239.

⁵⁸ *Ibid.*, p.87.

⁵⁹ *NZPD*, 57, 1887, p.83. Patrick Alphonsus Buckley (1841-1896), a lawyer later appointed to the judiciary, married a woman considerably younger than himself. He has been

Undaunted by this solid display of opposition, Oliver Samuel took up where Tole and Reynolds left off. A lawyer and the son of a clergyman, Samuel introduced private member's bills on the subject in 1887, 1888 and 1889. As a lawyer Samuel no doubt came across many cases of domestic discord. Recognising a range of causes of marital breakdown, he advocated equal access to divorce for men and women and urged the acceptance of desertion, insanity, drunkenness, and imprisonment as further grounds for marriage dissolution.⁶⁰ Unimpressed by Samuel's persistence, his more conservative colleagues reiterated their opposition to reform. That these were private member's Bills did not help Samuel's cause. The Government, shying away from controversy, declined to take up the issue. Without its support Samuel could not secure sufficient time for effective debate and discussion within the House.⁶¹ The lack of government support also laid Samuel open to the criticism that this was an unjustified personal crusade. Attempting to refute this idea, Samuel declared that he had received 'close upon a thousand letters and telegrams' from the public in support of his efforts.⁶² Nevertheless, Samuel failed to convince significant numbers of his colleagues that there was genuine public demand for reform. Until they themselves heard the public clamour for change they would not countenance reform of the divorce law.

Public support for divorce reform was not widely expressed until the mid-1890s. Most people would not have been affected by the legislation and, given the scandalous nature

described as a jealous husband who, it is rumoured, tarred and feathered one of his wife's admirers: Robin Cooke (ed.), *Portrait of a Profession: The Centennial Book of the New Zealand Law Society* (Wellington: A.H. & A.W. Reed, 1969), p.55.

⁶⁰ NZPD, 1887, 58, p.15. G.H. Scholefield (ed.), *Dictionary of New Zealand Biography*, Vol. II (Wellington: Department of Internal Affairs, 1940), p.273.

⁶¹ Mansell, p.37.

⁶² NZPD, 60, 1888, p.242.

of divorce, would have chosen to ignore or avoid the issue.⁶³ Individuals for whom the matter was directly relevant no doubt preferred to write privately to sympathetic politicians rather than parade their sorrows in public. The relative silence of the women's organisations during the 1880s and early 1890s can largely be attributed to their focus upon the suffrage campaign. Once they had gained the vote they turned their attention to wider social questions, including the deficiencies of marital law.

Parliament received the first two public petitions on divorce reform law, including one from the Bishop of Christchurch, in 1891. Both petitions opposed reform. However, between 1895 and 1898 Parliament received twenty-one petitions of which seventeen favoured change. Women's organisations presented six petitions, all during 1895. Two of the women's organisations petitioned solely for the introduction of equal grounds of divorce for men and women.⁶⁴ The others were less specific, simply requesting that the divorce law be amended.⁶⁵ Ministers of religion presented a total of nine petitions. Four petitions opposed proposed reforms, three confined themselves to requesting equal divorce conditions for men and women and two suggested that desertion be included alongside equal conditions.⁶⁶

⁶³ Mansell, p.35.

⁶⁴ Public Petitions, *AJHR*, 1895, I-1. The two organisations concerned were the Auckland Women's Liberal League and the Gisborne Women's Political Association.

⁶⁵ *Ibid.* These organisations were the Malvern Women's Institute, the Canterbury WCTU, the Auckland Women's Political League, and the Napier WCTU.

⁶⁶ Public Petitions, *AJHR*, 1880-1898. Opponents of reform included the Bishop of Christchurch (1891); the Venerable B.T. Dudley, Archdeacon of Auckland (1897); Reverend G. MacMurray of Auckland (1898); and Archdeacon Willis of Waikato (1898). Willis advocated equalisation in 1895, 1896 and 1897. Reverend William Bannerman presented the two petitions in favour of desertion as grounds for divorce (1895, 1897).

Bishop Cowie of Auckland, Primate of New Zealand, detailed the Anglican position on divorce reform in 1894. The Bishop approved moves to place men and women on an equal footing but declared the Church resolutely opposed to further extensions of the grounds for divorce. Furthermore, he announced, if the legislation was extended he would prevent the clergy from remarrying anyone divorced under the new law.⁶⁷ The Roman Catholic Church opposed reform with even more vigour than Bishop Cowie.⁶⁸ Indeed, the Catholic Bishop of Auckland, John Luck, used the question of reform to attack the Anglican establishment, arguing in 1894 that their laxity had led to a weakening of church authority on marital issues.⁶⁹ The Presbyterian Church supported the Anglican position. Although the Reverend William Bannerman, a well-known Dunedin Presbyterian, twice petitioned parliament to accept divorce on the grounds of desertion, the Dunedin Synod declared its opposition in 1894 to any reform other than the introduction of the equal adultery provision.⁷⁰ The Methodist Church stood out in its refusal to take a firm public stand on the issue.⁷¹

Twelve of the seventeen petitions offered in favour of divorce reform asked only that the grounds of divorce be made equal for men and women. There was no suggestion that the grounds for divorce for men be reduced to those available to women. Those demanding equality appear to have accepted the validity of divorce on the sole ground of adultery for

⁶⁷ *Otago Daily Times*, 4 and 16 August 1894, cited in Mansell, pp.53-54. See also Laws, p.31.

⁶⁸ Mansell, pp.55-57. Phillips, *Divorce in New Zealand*, pp.31-32.

⁶⁹ *The New Zealand Herald*, 22 August 1894, p.3, col.2, cited in Laws, p.32.

⁷⁰ Public Petitions, *AJHR*, 1895, I-1, no.203; I-1, 1897, no.354. Laws, p.41; Mansell, pp.52-3. Bannerman served as Moderator of the Presbytery of Otago in 1855, Moderator of the Synod in 1873 and 1899 and Clerk of the Synod from 1866 to 1901. He became a doctor of divinity (Edinburgh) in 1900 and died in 1903: J.R. Elder, *The History of the Presbyterian Church of New Zealand 1840-1940* (Christchurch: Presbyterian Bookroom, 1940) pp.50, 408.

⁷¹ Mansell, p.57.

either sex. A majority of the petitioners clearly found the double standard inherent in existing legislation repugnant. The colony's newspapers reflected similar views. As early as 1888 equalisation appears to have received unanimous approval from the New Zealand press.⁷² However, although eager to change this aspect of marriage legislation, petitioners and newspaper commentators were less certain of the merits of more extensive changes to the law.

The actions of the Women's Christian Temperance Union and the National Council of Women revealed the ambivalence felt by many people towards divorce reform. In 1896, delegates at the Unions's National Convention in Dunedin passed a resolution in favour of equal divorce conditions for men and women. They subsequently opposed motions proposing that desertion, drunkenness, 'hopeless lunacy', and long terms of imprisonment be accepted as grounds for divorce.⁷³ The National Council of Women similarly confined itself to urging only that divorce be equalised.⁷⁴ Feminists found the issue of divorce liberalisation problematic. Some argued that divorce benefited errant husbands rather than long-suffering wives. '[H]owever it may seem to favour our sex at first,' wrote one reformer, 'easy divorce always ends in pressing hardest on the woman'.⁷⁵ It was argued that women's economic

⁷² *Ibid.*, pp.34-35.

⁷³ WCTU Minutes, National Convention, Dunedin, 7 April 1896 (MS Papers 79-057-09/09, ATL).

⁷⁴ NCW of NZ Inc. Register of Resolutions, 1896-, p.L2 (NCW, Christchurch Branch Records).

⁷⁵ 'Female Franchise in New Zealand: How it Works', *Woman's Voice*, 1, 7, 3 November 1894, p.90, quoted in Hilary Golder, *Divorce in New South Wales* (Kensington: New South Wales University Press, 1985), p.224.

dependence on men meant that divorce was only too likely to harm rather than help wives.⁷⁶

How would a divorced wife support herself once thrown off by a husband grown tired of her?

Other feminists, in England and New Zealand, opposed reform on the grounds that divorce undermined the family and subverted public morality. Elizabeth Chapman, an English feminist, described divorce as 'an unmixed evil ... It tends to undermine monogamy ... encourages hasty choice [and] puts a premium on temporary liaisons'.⁷⁷ Although critical of many aspects of marriage, the majority of feminists placed a high value on the institution.⁷⁸ Stable and happy marriages, they believed, provided the basis for healthy families and a stable society. Leading New Zealand feminist Kate Sheppard, a supporter of equal divorce, articulated the unease felt by many women. 'The family is the unit of the State' she wrote in 1896, 'and any attempt to loosen family ties must be regarded as one of great gravity'.⁷⁹

Religious beliefs also influenced women's views on divorce. Most women in the Women's Christian Temperance Union and the National Council of Women shared strong and sincere Christian beliefs. Church opposition to reform and personal religious convictions no doubt played a part in discouraging women from seeking wide-ranging reforms.⁸⁰ With largely Christian, respectable and middle-class memberships, it is not surprising that the

⁷⁶ Phillips, *Divorce in New Zealand*, p.33; Bland, p.134; Golder, p.224. Jane Lewis notes that this argument was still being used by English feminists in the 1950s, p.130.

⁷⁷ Elizabeth Chapman, *Marriage Questions in Modern Fiction* (London: Bodley Head, 1897), p.205, cited in Bland, p.134.

⁷⁸ Raewyn Dalziel, 'The Colonial Helpmeet: Women's Role and the Vote in Nineteenth Century New Zealand', *NZJH* 11:2 (October 1977), p.120. See also Kingsley Kent, pp.84-85; Bland, p.133.

⁷⁹ Kate Sheppard, *White Ribbon* 2:16 (October 1896), pp.6-7. Sheppard implied that she herself was not opposed to further extension of the divorce law. Nevertheless, she was well aware of the need for women's organisations to avoid splitting their members over this issue.

⁸⁰ Golder, p.222.

Women's Christian Temperance Union and the National Council of Women declined to support extensive reform of the divorce laws. While members were prepared to advocate equal divorce conditions as part of the wider battle against the sexual double standard, many harboured doubts regarding further extension of the grounds for divorce. Rather than risk dividing their members over this issue, the Women's Christian Temperance Union and the National Council of Women focused their attention on the underlying problem of married women's lack of economic power. Articles and convention addresses on the subject of married women's economic independence proved controversial enough without venturing into the minefield of divorce liberalisation.⁸¹ For the sake of unity the Union and the Council limited their advocacy of reform to the elimination of the double standard from the legislation.

The parliamentary debates of the 1890s reflect similar uncertainties regarding amendment of divorce law. Difficulties in reaching a consensus on either equalisation or liberalisation significantly hindered the parliamentary reform campaign. Between 1890 and 1898 six different politicians introduced seven different divorce reform bills into parliament.

In 1891 Wesleyan lawyer John Joyce, the member for Akaroa, introduced a bill containing six grounds of divorce into the House of Representatives.⁸² Legislative Councillor John MacGregor, an able and liberal-minded lawyer and the foremost reform advocate of the 1890s, introduced a five-clause bill into the upper chamber in 1894, following it up with a

⁸¹ Judith Devaliant outlines the controversy sparked by feminists' advocacy of allowances for housewives, Chapter XV. See Lovell-Smith for articles by Kate Sheppard, Lucy Smith and Amey Daldy on married women's economic independence. See also Roberta Nicholls, *The Women's Parliament: The National Council of Women of New Zealand 1896-1920* (Wellington: Victoria University Press, 1996), pp.33-49.

⁸² *NZPD*, 72, 1891, p.214. Joyce (1839-1899) also supported women's suffrage.

two-clause version in 1895.⁸³ Rationalist and secularist William Collins introduced a Bill into the House in 1895 but confined himself to advocating equal divorce for the sexes.⁸⁴ The following year prominent freethinker and Legislative Councillor William Bolt introduced a reform bill based on MacGregor's proposals of 1894.⁸⁵ Legislative Councillor John Rigg, a Catholic turned Quaker who was to divorce his own wife in 1918, also presented a Bill in 1896 but asked only that conditions be made equal for men and women.⁸⁶

It was not until 1898 that a divorce reform bill finally succeeded. In the end it was leading liberal and freethinker Robert Stout who finally broke through political resistance to reform.⁸⁷ Stout's Bill became the 1898 Divorce Act and extended the grounds of divorce to include simple adultery on the part of wife or husband, wilful desertion for five years, habitual drunkenness over four years, conviction for a minimum of seven years for attempted murder of a spouse, and non-compliance with a decree for restitution of conjugal rights (failure to return to the aggrieved spouse).⁸⁸

⁸³ *NZPD*, 83, 1894, p.217; *NZPD*, 87, 1895, p.603. John MacGregor (1850-1936) was brother-in-law to Robert Stout and a strong advocate of women's franchise: Cooke, p.325. MacGregor's sterling efforts paved the way for Stout's successful 1897/8 Divorce Bill.

⁸⁴ *NZPD*, 88, 1895, p.182. William Whitehouse Collins (1855-1923) was a rationalist lecturer. He was president of the Canterbury Freethought Association and vice-president of the New Zealand Freethought Association. Prior to emigrating to New Zealand Collins worked with well-known English secularists and birth-control advocates Charles Bradlaugh and Annie Besant: *DNZB*, Vol.II, p.93.

⁸⁵ *NZPD*, 92, 1896, p.266; *CNZ*, Vol.IV, pp.73-74.

⁸⁶ *NZPD*, 94, 1896, p.214; *DNZB*, Vol.II, pp.423-24.

⁸⁷ Robert Stout (1844-1930) introduced his Bill in late 1897. Due to the Government's suspension of discussion at the end of that session (resulting from a mass of uncompleted business on the books) the Bill was carried over into the 1898 parliamentary year: *NZPD*, 98, 1897, p.545; *NZPD* 101, 1898, p.313. Married to prominent feminist Anna Paterson Stout, Robert Stout was strongly supportive of the women's movement of the late nineteenth century: *DNZB*, Vol.II, p.484.

⁸⁸ 1898 Divorce Act. Non-compliance with a decree for restitution of conjugal rights was, in effect, the same as desertion. However, petitioners did not need to wait for five years

Freethinking and rationalist politicians played a major role in promoting liberalisation of divorce law.⁸⁹ They led the charge against divorce provisions based upon Anglican religious doctrines and outmoded aristocratic and patriarchal precepts and argued that reason rather than religion should shape marital law. In an article entitled 'Marriage and Divorce: The Ecclesiastical and the Rationalistic Conceptions of Marriage Contrasted', John MacGregor argued that divorce was purely a social and not a theological issue. MacGregor considered that more liberal divorce laws would better reflect social realities. 'Marriage is but a means to an end', he argued, 'in the case of adultery, desertion or any other marital offence ... the marriage has ceased to serve that end and to allow divorce is simply to recognise the fact not to cause it'.⁹⁰ William Bolt went a step further and challenged the authority of both church and state over marriage:

What is the marriage-tie I, ask? Certainly it is not a civil bond, and certainly it is not an ecclesiastical bond. I say that it is a spiritual bond ... and, that being so, then it is manifest that neither the Church nor the State can have any control over or can make or unmake that tie ... the marriage ceremony is a right and proper thing; but, once the spirit which underlies marriage is done away with, divorce has already taken place, and the sanction of the State should be given to that divorce.⁹¹

The rationalist and freethinking sponsors of the 1890s Divorce Bills agreed with their Christian critics that marriage was a valuable social institution. However, they argued that

to pass before applying for relief. The decree required cohabitation only: it did not imply a renewed sexual relationship. See Phillips, *Divorce in New Zealand*, p.23.

⁸⁹ See Peter Lineham, 'Freethinkers in Nineteenth Century New Zealand', *NZJH* 19:1 (April 1985) for a detailed discussion of organised secularism in New Zealand.

⁹⁰ John MacGregor, *Marriage and Divorce: The Ecclesiastical and the Rationalistic Conceptions of Marriage Contrasted* (Dunedin: 1897), pp.2, 5. Later published as a pamphlet, the article first appeared in the *Otago Daily Times*, 7 October, 1897. See also *NZPD*, 83, 1894, p.456.

⁹¹ *NZPD*, 83, 1894, pp.578-579.

the rules and regulations governing the institution could, and should, be improved. Social realities, not religious tradition, should shape legislation.

Religious convictions encouraged other politicians to reject divorce reform out of hand. Until his death in 1896 at the age of fifty-five, Legislative Councillor P.A. Buckley upheld the views of many of New Zealand's Catholics in his staunch opposition to divorce. 'I am old-fashioned enough, even in this enlightened age, to believe that marriage is a Divine institution,' Buckley argued in 1894, 'and I am not aware that the Authority who issued the mandate has given any authority to the contrary; neither has He delegated any power to any Legislature to sanction divorce'.⁹² Many other politicians, Protestant as well as Catholic, also reminded their colleagues of the sacred nature of marriage during the divorce debates. However, unlike Buckley, most appear to have been able to reconcile equal divorce with their religious beliefs. The support of the Protestant churches for this one aspect of reform no doubt helped many protestant politicians to overcome their religious scruples on the matter.

The sponsors of the 1890s divorce bills each placed equal divorce at the centre of their demands for reform. Although some removed or amended clauses in order to make Bills more palatable to opponents, none would compromise on the question of equal divorce conditions for men and women. This determination to place men and women on an equal footing stimulated intense debate in both parliamentary chambers. Politicians recognised that making the conditions of divorce equal for men and women directly challenged traditional male prerogatives. They also understood that the demand for equal divorce conditions was part of a wider questioning of male and female sexual and social roles, rights and responsibilities. The issue of equal divorce forced politicians to examine and justify their

⁹² *Ibid.*, p.575.

beliefs about gender relations. Was adultery equally reprehensible behaviour whether engaged in by husband or wife? If not, why not? What role did biology play in determining the seriousness of the offence? What was 'normal' sexual behaviour for men and women? In debating these questions politicians both challenged and reaffirmed existing constructions of male and female sexuality.

John Joyce directly addressed justifications of separate sexual and moral standards for men and women when he introduced the second reading of his 1891 Divorce and Matrimonial Causes Bill. Denying the validity of the double standard, Joyce quoted from the *Auckland Star*: 'No rational argument why the sexes should not in this respect be treated on an equal footing can be advanced, unless it is premised that for some unexplained reason man has a prescriptive right to offend'.⁹³ The concept of a male 'prescriptive right to offend' lay at the heart of the debate over adultery and divorce. The debate ran along fairly clear lines. Politicians who supported women's right to petition on the grounds of simple adultery argued in clear moral terms that male and female adultery were equally objectionable behaviours. Those who rejected this view suggested that male adultery was necessarily a lesser offence for several different reasons. Some argued that men's sex drives were stronger than women's and thus a husband's adultery was more excusable than a wife's on physiological grounds. A second argument, one based upon traditional patriarchal ideology, maintained that female adultery was a far more serious issue because a wife's illegitimate children might inherit the property of the husband's family. Many argued that any extension to the grounds for divorce would undermine marriage and the family by providing for increased rates of divorce. Other

⁹³ NZPD, 72, 1891, p.216.

reform opponents simply resorted to citing 'general opinion' or 'commonsense' in support of retention of the status quo.

Several opponents of equal divorce drew upon science to support their positions. The growing authority of science as a means of understanding the wider world provided reform opponents with new and more authoritative arguments to defend practices originally based on patriarchal precepts. Prominent Catholic Morgan Stanislaus Grace, a successful doctor and former army medical officer, summed up the physiological argument for separate sexual standards for the sexes during debate in the Legislative Council in 1896:

It is a matter entirely clear in the physiology which governs nature that adultery in the male is a crime to which the male really is very much more accessible than the female from the force of nature. That is a physiological law, and you cannot upset it. And the reason of the law is quite simple. It is because man is inherently selfish, and nature has put so violent a passion in him in order that he may increase and multiply the people on the earth. In so far, his culpability is lessened. In the eye of legislation of reasonable beings the same onus is not to be laid upon the male as upon the female for committing adultery. Nature cannot be shoved aside and slurred over and overridden ...⁹⁴

It is likely that Grace was familiar with the works of well-known English doctor William Acton. In *Functions and Disorders of the Reproductive System* (1857), Acton argued that the vast majority of women experienced little if any sexual feeling and that 'even if aroused (which in many cases it can never be) it is very moderate compared with that of the male'.⁹⁵ Historians have vigorously debated the extent to which Acton's colleagues shared his views.⁹⁶ Jean L'Esperance argues that although some British physicians acknowledged

⁹⁴ NZPD, 92, 1896, p.270.

⁹⁵ Quoted in John S. Haller, Jr., and Robin M. Haller, *The Physician and Sexuality in Victorian America* (Urbana/Chicago/London: University of Illinois Press, 1977), p.98.

⁹⁶ Roy Porter and Lesley Hall, *The Facts of Life: The Creation of Sexual Life in Britain, 1650-1950* (New Haven & London: Yale University Press, 1995), pp.141-42. See also Kent, p.38.

sexual feeling in women, the medical profession generally accepted Acton's views.⁹⁷ F.B. Smith, however, places Acton on the fringe of British medical opinion.⁹⁸ Whether or not such beliefs were typical of physicians in this period, Grace was in a position to disseminate them within the Council with the assurance of a medical man among laymen.

It is clear that a number of Grace's parliamentary colleagues sympathised with his views. The Leader of the Oppositions, Captain W.R. Russell argued in the House that men's strong sexual instincts ought to be acknowledged in divorce legislation.⁹⁹ 'The gratification of that instinct' he declared, 'was almost the most powerful impulse of [a man's] existence'. With women 'the instinct was maternal, and was very materially different to the powerful desire on the part of the man'.¹⁰⁰ F.H.D. Bell spoke of male infidelity as a 'mere accident - a moment of passion on the part of a man - a thing which might happen to almost anybody'.¹⁰¹ Female infidelity, in contrast, was not the result of a momentary surge of passion or lust but

⁹⁷ Jean L'Espérance, 'Doctors and Women in Nineteenth-Century Society: Sexuality and Role,' in John Woodward & David Richards (eds.), *Health Care and Popular Medicine in Nineteenth-Century England* (London: Croom Helm, 1977), pp.111-112.

⁹⁸ F.B. Smith, *The People's Health 1830-1910* (Canberra: Australian National University Press, 1979), p.295.

⁹⁹ William R. Russell (1838-1913), a Conservative, led the Opposition in Parliament between 1893 and 1903. Russell was an English-born, Sandhurst educated soldier who came from a military family. In New Zealand he turned to farming and the breeding and racing of horses. MHR for Napier 1875-81 and Hawkes Bay 1884-1905, Russell was raised to the Legislative Council in 1913, the year of his death. Russell's Liberal opponents considered him a 'typical representative of an oligarchy which comprised well-to-do squatters of English birth and conservative opinions, having little sympathy for working people of little means'. Nevertheless, he held liberal views on a number of issues affecting 'ordinary people' and favoured votes for women. Russell received a knighthood in 1902 in recognition of his long parliamentary career: *DNZB*, Vol.II, pp.436-37.

¹⁰⁰ *NZPD*, 93, 1896, p.432.

¹⁰¹ *Ibid.*, p.432. Francis Henry Dillon ('Harry') Bell (1851-1936), a lawyer, has been described as being 'often found on the left' with regard to matters of individual liberty and welfare: *DNZB*, Vol.II, p.36. This concern for individual rights evidently did not extend to cover the rights of women whose husbands engaged in extra-marital affairs.

evidence of a premeditated and more serious betrayal of a spouse.¹⁰² Many defenders of the double standard merely stated that adultery was different for men and women, apparently feeling that the reasons were self evident.¹⁰³ It is likely that at least some of these references to 'commonsense' or 'circumstances, which must be obvious to all' signified belief in naturally aggressive male and naturally passive female sex drives.¹⁰⁴

Lawyer Frederick Fitchett and the elderly Dr Samuel Hodgkinson also used physiology to justify opposition to equalisation. However, they placed the emphasis upon traditional patriarchal lineage and inheritance concerns rather than upon biological sexual urges. 'The gravity of the case is proportional to the gravity of the consequences' Fitchett asserted in 1888.¹⁰⁵ 'In [the wife's] case the purity of the stock is affected: in [the husband's] case it is not'.¹⁰⁶ Hodgkinson continued in the same vein the following year:

There are physiological reasons which completely alter the cases. In the case of adultery by the wife the whole family status is destroyed - the head of the family can have no certainty as to the children being his own offspring; but that is not the case if the husband has committed adultery.¹⁰⁷

¹⁰² Golder, p.71; Mansell, p.73.

¹⁰³ The second reading debate of MacGregor's 1895 Divorce Bill in the House of Representatives provides several examples: *NZPD*, 89, 1895, pp.317-331. Predictably, Russell and Bell's speeches outraged the feminists. See the *White Ribbon* 2:16 (October 1896), p.9.

¹⁰⁴ H.S. Fish (Dunedin): *NZPD*, 72, 1891, p.217. Sir G.S. Whitmore: *NZPD*, 92, 1896, p.268.

¹⁰⁵ Frederick Fitchett (1854-1930) held a doctorate in Law and served as Whip for the Liberals in 1890: *CNZ*, Vol.IV, p.89.

¹⁰⁶ *NZPD*, 60, 1888, p.237.

¹⁰⁷ *NZPD*, 64, 1889, p.186. The 'genial and cheerful' Dr Samuel Hodgkinson (1817-1914) ardently opposed women's suffrage as well as equal divorce. He considered female suffrage 'contrary to the constitution of nature and the ordinance of God': *DNZB*, Vol.II, p.224. Nevertheless, the *Cyclopedia of New Zealand* described him as a man who had been 'foremost in all progressive movements, [and had] always advocated a liberal policy': *CNZ*, Vol.IV, p.794.

Fitchett, Hodgkinson and many of their colleagues considered the social consequences of female adultery to be the crucial factor in distinguishing between male and female infidelity. In their minds consequence, not cause, was the fundamental issue. The possibility that an adulterous wife, impregnated by her lover, might pass the child off as her husband's had serious implications for male property-holders. As a result of such a deception a husband's name and property might be passed on to another man's child. Legislative Councillor G.S. Whitmore clearly considered property the crux of the issue.¹⁰⁸ While a wife's illegitimate children might inherit the property of the husband's family, he argued, 'in the case of the husband nothing that can be done can possibly interfere with the property of the wife'.¹⁰⁹

Long-standing beliefs to do with male ownership of women's bodies also underpinned the 'cuckoo-in-the-nest' or 'spurious issue' argument.¹¹⁰ Old common-law actions for 'criminal conversation' provide a vivid example of the operation of these beliefs in law.¹¹¹ Prior to the 1867 Divorce Act, marital law required a cuckolded husband to successfully sue his wife's lover for damages before he could petition for a divorce by private Act of Parliament. A successful prosecution established that 'criminal conversation' had taken place and forced the guilty wife's paramour to provide her husband with monetary compensation. In violating a husband's exclusive right of sexual access to his wife's body, the law maintained that the wife's lover had committed a form of trespass.¹¹² Although the

¹⁰⁸ Major-General G.S. Whitmore (1830-1903) was a veteran of the South African, Crimean and New Zealand Wars. He was appointed to the Legislative Council in 1863 and served on that body until his death in 1903: *ENZ*, Vol.III, pp.656-58.

¹⁰⁹ *NZPD*, 83, 1894, p.572.

¹¹⁰ Bland, p.138. Golder, p.70.

¹¹¹ For a detailed exploration of the origins, use and decline of the action for criminal conversation see Stone, *The Road to Divorce*, Chapter IX.

¹¹² *Ibid.*, pp.233-36; Phillips, *Putting Asunder*, p.228.

1867 Divorce Act removed the need for husbands to establish trespass in this way, the new legislation upheld the principle of male ownership of women's sexuality.¹¹³ The sexual double standard contained in the 1867 Act clearly implied that husbands held ownership rights over their wives' sexuality and fertility.¹¹⁴ In the eyes of the law, a wife guaranteed her husband exclusive sexual access to her body. If she broke her word she lost the rights due to a wife.¹¹⁵ However, a wife could not claim ownership rights in her husband's body.¹¹⁶ His adultery did not threaten her children's rights. According to supporters of the double standard, a husband's infidelities could thus be passed over.

Opponents of the double standard dismissed property-based appeals as selfish, unjust and irrelevant. They rejected traditional patriarchal discourse in favour of egalitarian principles and the ideal of companionate marriage. Kate Sheppard explicitly attacked property-based arguments in a *White Ribbon* editorial of 1896. '[I]n laws made solely by male property holders,' she declared, 'the interests of women and the principles of justice, have been ignored in deference to the sacred rights of property'.¹¹⁷ Within Parliament, reformers similarly argued that higher principles of justice and equality, not property, should govern marital law. In 1885, at the start of the parliamentary divorce reform campaign W.J. Steward argued that the general principle of equality had been established in the 1884

¹¹³ The action for criminal conversation remained on the statute books until 1928 when it was finally abolished under s.28 of the 1928 Divorce and Matrimonial Causes Act: G.W. Hinde (ed.), *Mozley and Whiteley's Law Dictionary*, NZ edn. (Wellington: Butterworths, 1964), p.99.

¹¹⁴ Kent, p.26.

¹¹⁵ *Ibid.*, p.88.

¹¹⁶ Phillips, *Putting Asunder*, p.228.

¹¹⁷ Kate Sheppard, *White Ribbon* 2:16 (October 1896), pp.6-7, reproduced in Lovell-Smith, p.156.

Married Women's Property Act.¹¹⁸ 'All rights that had been conceded to the stronger sex', he declared, 'should also be conceded to the weaker, and in so many respects the better, sex'.¹¹⁹

John MacGregor similarly linked the question of equal divorce to a wider context of equality between the sexes. He argued that

the time had come, now that women had been by the Legislature placed on the same footing as men as regarded their political rights, when they should be placed on the same footing with regard to matrimonial rights. Marriage had now become almost completely a union of perfect equality and independence: in fact it was now perfectly complete, except in that one particular¹²⁰

MacGregor wished the law to reflect the new ideal of companionate marriage in which husband and wife lived together as equal partners. In his enthusiasm for the general principle of matrimonial equality, MacGregor considerably overstated the case. As many feminists argued well into the twentieth century, women's economic dependence on men severely undermined the attainment of 'perfect equality and independence' within marriage.

Opponents of reform also addressed the connection between divorce reform and wider women's rights. However, they clung to traditional patriarchal structures which denied women full equality with men. Dr Fitchett, whose concern over 'spurious issue' has already been mentioned, dismissed the equality argument altogether in 1888. Equal divorce, Fitchett argued, sacrificed 'the best interests - of society to an utterly unreal and artificial notion of the equality of the sexes'.¹²¹ In 1891 the anti-feminist Henry Fish used the divorce debate to

¹¹⁸ William Jukes Steward (1841-1912), a journalist, came from a Non-conformist religious background. He was prominent in the volunteer movement and attained the rank of Major. Steward, a Liberal, played a leading role in the 1870s campaign to decriminalise marriages between widowers and their sisters-in-law: *CNZ*, Vol.I, pp.113-14.

¹¹⁹ *NZPD*, 51, 1885, p.508.

¹²⁰ *NZPD*, 87, 1895, p.604.

¹²¹ *NZPD*, 60, 1888, p.237.

launch a stinging attack on the feminist movement and parliamentary supporters of women's franchise:¹²²

I believe, as to those honourable gentlemen who are always cramming this cry about the rights of women down our throats - that in their case Nature has made a mistake, and that, instead of being men, they should have been women and have had the petticoats, and that their better halves should have had the trousers.¹²³

Appeals to abstract principles of equality and justice could make little impact on such men.

Despite the frequent linking of divorce reform with the feminist movement, support for women's political equality and concern for women's welfare did not necessarily translate into support for equal divorce rights.¹²⁴ Sir Julius Vogel, a staunch supporter of female suffrage, vigorously opposed Oliver Samuel's 1887 Divorce Bill.¹²⁵ Vogel defended the double standard, declaring that 'Whereas adultery on the part of the woman is held to inflict upon her a lifelong stain, from which she can never recover, the view of the world is not so in the case of the man'.¹²⁶ F.H.D. Bell, elected to Parliament in 1893 with considerable support from women voters, also opposed equalisation.¹²⁷ In 1895 Bell forthrightly expressed his

¹²² Henry Smith Fish (1838-1897), a painter and glazier portrayed himself as the working-man's champion. Although a Liberal, he has been described as 'inconstant' and as 'no party man'. Fish vehemently opposed women's franchise and his private morality came under scrutiny during the suffrage campaign. It is argued that during his time as a magistrate in Dunedin Fish 'demonstrated a relaxed morality by his lenience towards a well-known brothel-keeper': *DNZB*, Vol.II, pp.143-44.

¹²³ *NZPD*, 72, 1891, p.219.

¹²⁴ Phillips, *Divorce in New Zealand*, p.26.

¹²⁵ Sir Julius Vogel (1835-1899) was the son of a Christian father and a Jewish mother. His parents separated when he was six years old. Vogel spoke at length against Oliver Samuel's 1887 Divorce Bill, finding it 'almost impossible to pick out any point in the Bill which [he was] able to support': *NZPD*, 58, 1887, pp.453-58.

¹²⁶ *NZPD*, 58, 1887, pp.454-456.

¹²⁷ A self-proclaimed radical and socialist, Bell was also a Freemason (grand master in 1894 and 1895) with Jewish and Quaker elements in his background. He had liberal leanings but has been described as 'the supreme example of a tory radical in New Zealand politics': *DNZB*, Vol.II, pp.35-36; Grimshaw, p.105.

disapproval of the fact that 'a great many people of the opposite sex have made [divorce reform] a cardinal part of their political programme'.¹²⁸ A long-serving trustee of the Wellington Society for the Protection of Women and Children and a man remembered as an 'open-hearted philanthropist', Bell argued that equal divorce did not serve women's interests.¹²⁹ Bell's association with the Society no doubt exposed him to the desperate plight of women deserted by their husbands. A woman who divorced her husband for the 'trifling' offence of adultery would lose her provider and risk a descent into deprivation and poverty. Bell evidently considered the offence a small matter compared to the consequences of divorce for dependent women.

The divorce debates display politicians' use of a range of constructions of femininity and masculinity to support their positions. Opponents of equal divorce championed concepts of male and female difference. In their minds, nature dictated separate moral standards for men and women. Male adulterers, it was argued, acted on natural physiological instincts. Such men could still be good husbands and fathers.¹³⁰ In contrast, a wife's adultery went against nature and tainted her whole existence. It was suggested that 'no honest, decent woman' would even consider divorcing her husband.¹³¹ Not only was it not in a woman's interests to seek divorce (as Bell argued), such action was antithetical to her nature. Only women corrupted in some way would ever entertain the idea.¹³² Given the strength of the

¹²⁸ *NZPD*, 89, 1895, p.319.

¹²⁹ NZSPWC (Wellington), *Annual Reports* (MSx 3292 Acc.91-163, MSx 3293 Acc.91-163, ATL); *DNZB*, Vol.II, p.36; *NZPD*, 89, 1895, p.319.

¹³⁰ *NZPD*, 61, 1888, p.239.

¹³¹ *NZPD*, 60, 1888, p.241.

¹³² *Ibid.*

image of woman as home-maker in this period, it is not surprising that a number of politicians recoiled in horror at the possibility of women choosing to break up the family.¹³³

Opponents of equal divorce stigmatised women who failed to live up to this domestic ideal. Concern over male property rights produced images of women as deceivers and betrayers of men, while concern for the stability of the family generated images of foolish, impetuous or irrational women.¹³⁴ Henry Fish argued that the divorce law of 1867 protected such women from themselves. The first impulse of a wife alerted to her husband's infidelity might be to divorce her wayward spouse. Given time for reflection, Fish declared, it was likely that she would be thankful that the law had not permitted her to take up the option.¹³⁵ Social and sexual difference formed the crux of the argument for Fish and his fellow opponents of equal divorce. 'True' women, they argued, shrank from adultery and divorce. Women who failed to act this way needed the state to remind them of their duties. 'True' men might stray from the marital bed but, given their physiology, their behaviour was not unnatural and could more easily be excused.

Politicians who held conventional views on male and female sexuality found it difficult to combat opposition based on physiological differences between men and women.¹³⁶ Rather than deny difference, Oliver Samuel sought to use it for his own purposes.

During the 1880s, Samuel invoked images of feminine reticence, delicacy and virtue in support of his case. Defending equalisation of the legislation against the charge that it would

¹³³ Phillips, *Divorce in New Zealand*, p.27. For a detailed discussion of this domestic ideology see Dalziel, pp.112-123.

¹³⁴ Hilary Golder notes the use of similar arguments in Australian divorce debates, pp.86-87.

¹³⁵ *NZPD*, 64, 1889, p.183.

¹³⁶ Golder, p.86.

weaken marriage, Samuel argued that women's natural delicacy and modesty would prevent most injured wives from seeking divorce. 'The very superiority of her affections, her love for her children, her distaste for publicity and notoriety, will often restrain her from asking for the relief that the court would afford her'.¹³⁷ Thus only women suffering under extreme provocation would make use of the law. Although Samuel believed that many women would readily forgive the offence, he nevertheless argued that a woman ought to be able to divorce her husband for infidelity if she so desired.¹³⁸ Samuel portrayed male infidelity as a form of cruelty. Equal divorce, he argued, would provide innocent and suffering wives with relief.¹³⁹

Sponsors of reform Bills spent little time discussing equal divorce during the mid-1890s. By this time members of the House of Representatives had largely accepted the merits of the equal divorce case.¹⁴⁰ Although defenders of the double standard periodically raised their heads in both parliamentary chambers, the more contentious issue of extension of the grounds for divorce dominated debate. Neither MacGregor nor Stout wasted time on detailed discussion of physiological and property-based objections to equal divorce. When they did touch on equalisation of the law they emphasised the fundamental equality of men and women. MacGregor and Stout argued that equal divorce was simply a continuation of a trend towards placing women on the same footing as men in political and social life.¹⁴¹ The winning of the franchise in 1893 lent considerable weight to their argument. It both demonstrated the principle and encouraged recalcitrant politicians to take more heed of women's demands.

¹³⁷ *NZPD*, 58, 1887, p.450.

¹³⁸ *NZPD*, 60, 1888, p.234.

¹³⁹ *NZPD*, 58, 1887, p.450.

¹⁴⁰ Seddon remarked on this in 1895: *NZPD*, 88, 1895, p.185.

¹⁴¹ MacGregor: *NZPD*, 87, 1895, p.604. Stout: *NZPD*, 98, 1897, p.545.

MacGregor and Stout's line of argument corresponded with the approach taken by feminists, who dismissed physiological and property arguments outright. They refused to accept that male sexuality was not controllable.¹⁴² For these women equal divorce was about gender relations, not biology or property. The 'truly just man treats his wife as a partner and an equal', wrote Lucy Smith in the *White Ribbon* in 1895. Marriage should be based on mutual respect and esteem, 'the only safeguard of love and affection', argued Kate Sheppard the following year.¹⁴³ Feminists believed that male infidelity made a mockery of these ideals.

Male adultery destroyed the very basis of companionate marriage. How could a woman respect and esteem a husband who betrayed her trust? Feminists refused to accept the argument that male adultery was natural and relatively harmless. They argued that male philandering posed a threat to the whole family. A husband's infidelity could all too easily introduce venereal disease into the home. Men had to take greater responsibility for their sexual actions.¹⁴⁴

Political debates over equal divorce between 1885 and 1898 reveal a significant battle over male and female rights and responsibilities both within and outside marriage. Positions taken by politicians polarised around the rights of women versus the rights of men. Advocates of equalisation championed female autonomy and the general principle of equality of the sexes within marriage. It was only right and just, they argued, that husbands be bound to observe the same moral standards expected of wives. Defenders of the double standard fought a rearguard action to preserve male privilege and patriarchal power. Politicians who

¹⁴² Barbara Brookes, 'A Weakness for Strong Subjects: The Women's Movement and Sexuality', *NZJH* 27:2 (October 1993), p.151.

¹⁴³ Kate Sheppard, 'The Economic Independence of Married Women', *White Ribbon* (May 1896), pp.7-8, in Lovell Smith, p.153.

¹⁴⁴ Lucy Smith, *The Prohibitionist*, 26 January 1895, p.3, in Lovell Smith, p.177.

argued that equal access to divorce was not in women's best interests exhibited a paternalist mentality which denied female autonomy. In doing so they elevated the interests of men above those of women. Opponents of reform rejected the companionate view of marriage championed by feminists and their parliamentary supporters. They clung to older visions of marital relations which viewed women's sexuality and fertility as forms of property to be controlled by men.

The English 'Clitheroe case' of 1891 highlighted the existence of an ideological gulf in this period between those who upheld husbands' rights to control wives and those who supported wives' autonomy. Emily and Edmund Jackson, the principal actors in the case, married in England in 1887.¹⁴⁵ Shortly after the wedding Edmund sailed to New Zealand on the understanding that Emily would later join him. Emily decided not to join her husband but wrote to request his return. However, upon his return in 1888, Edmund found that his bride refused to have anything to do with him. The aggrieved Edmund sought and obtained a court order for restitution of conjugal rights. When Emily refused to obey the order Edmund took matters into his own hands.¹⁴⁶ In March 1891, he abducted his estranged wife as she left church in Clitheroe and took her to a house in Blackburn where he kept her under lock and key. Emily's sisters sought her release but Edmund argued that common law entitled him to keep his wife confined.

The lower court accepted Edmund's right to force his wife to remain with him. However, the Court of Appeal reversed the decision. In a unanimous verdict, the Court ruled that 'where a wife refuses to live with her husband he is not entitled to keep her in

¹⁴⁵ Bland, p.135-136. See also Shanley on the Clitheroe case, pp.177-185.

¹⁴⁶ Hammerton, p.131.

confinement in order to enforce restitution of conjugal rights'.¹⁴⁷ '[N]o English subject has such a right of his own motion to imprison another English subject, whether his wife or anyone else' declared the Lord Chancellor, Lord Halsbury.¹⁴⁸ In rejecting the ruling of the lower court, the Court of Appeal upheld the principles of female autonomy and independent female citizenship. The ruling did not go unnoticed in New Zealand. The decision of the Court of Appeal, remarked William Downie Stewart in the Legislative Council in 1891, 'was likely to revolutionise ideas as to marital life'.¹⁴⁹

The Clitheroe case and New Zealand's equal divorce debates of the 1880s and 1890s provide evidence of an ongoing ideological 'revolution' in this period in attitudes towards marriage, sexuality and gender relations. Edmund Jackson, the lower court that supported him, and New Zealand's anti-equalisation politicians upheld long-standing patriarchal prerogatives. In doing so, they denied wives full personal autonomy. Emily Jackson, feminists, the English Court of Appeal, and pro-equalisation politicians supported the egalitarian principles underlying companionate marriage and married women's rights to determine their own destiny.

In upholding women's rights, the reformers challenged male privilege and power. New Zealand supporters of equal divorce sought to limit and redefine acceptable male sexual behaviour as controllable. The 1867 Act had implicitly accepted male adultery as a regrettable but relatively trivial offence. The elimination of the double standard from divorce law in 1898 represented a significant victory for those who rejected this assumption and who

¹⁴⁷ *R v. Jackson*, *Law Reports*, 1 Q.B., 1891, p.671, quoted in Bland, p.136.

¹⁴⁸ *Regina v. Jackson* (1891), *LR*, Queen's Bench Division (Court of Appeal) 671, quoted in Hammerton, p.131.

¹⁴⁹ *NZPD*, 72, 1891, p.562.

argued that men could and should exercise a greater degree of self-control over their sexual urges. Through the new legislation the state forced men to accept greater responsibility for their sexual behaviour.

The final acceptance of equal divorce in 1898 was highly significant for marital relations. However, the gender dimension should not be allowed to obscure other significant aspects of the divorce debate.¹⁵⁰ For many politicians, marriage was more than a question of the rights of women or of unhappy individuals. Some argued that divorce, for any reason, posed a serious threat to the family, the community and, in turn, to the state. William Pember Reeves encapsulated this view in 1895 in a speech in which he rejected equal divorce and divorce on the grounds of desertion:¹⁵¹

`[A]s one who saw in [the institution of marriage] the whole foundation of civilisation and of social purity and social morality, he could only express solemnly his intense regret at apprehending that this House was about to pass a clause that struck at the very foundation of our social life.'¹⁵²

Sir Julius Vogel had argued in a similar vein in 1887. In Vogel's mind men and women married 'for better or for worse'. '[T]here should be no evasion of responsibility,' he declared, 'except upon very clear grounds, and grounds especially which will not be injurious to the community as a whole'.¹⁵³ 'The State', Vogel continued, 'must look for its own protection ... the question is not the happiness of the two persons, but whether under the "for

¹⁵⁰ Phillips, *Divorce in New Zealand*, p.29.

¹⁵¹ William Pember Reeves (1857-1932), married to active suffragist Maud Reeves, is considered the principal intellectual and ideologist of the Liberal party. He declared himself a socialist but his views on sexuality have been described as 'rigidly conventional and almost morbidly puritanical': *DNZB*, Vol.II, pp.411-14; Keith Sinclair, *William Pember Reeves: New Zealand Fabian* (Clarendon Press: Oxford, 1965), pp.317-18.

¹⁵² *NZPD*, 89, 1895, p.319.

¹⁵³ *NZPD*, 58, 1887, p.454.

better or worse" it is better for the community not to allow the tie to be abolished'.¹⁵⁴ The fiery Henry Fish painted the most vivid picture of the state of things to come should the reformers succeed:

If we render the facilities for breaking the marriage-tie too easy, the result will be that men and women will get married to gratify the propensities of the moment - to gratify the lust of the moment and to gratify the passion of the moment.... directly the marriage-day is over, and the feelings of one or the other are glutted, are satiated, then they will find out that they are not fit to be together, and will at once collude with each other to get up some cause for divorce; they will get the divorce, and will then repeat the process: so that the holy state of matrimony will be a farce, and it will make our women not wives or mothers, but something more approaching to a name which I could not use and do not wish to use in this House.¹⁵⁵

For many politicians, marriage and the family formed the glue that held society together.

Disruption of the family, they argued, would all too likely lead to wider social and moral disintegration.¹⁵⁶

Reformers challenged the view that relaxation of the divorce laws would weaken the family unit, undermine society and lead to moral laxity. Referring to cases of deserted wives who could not divorce their husbands in order to marry more responsible men, Oliver Samuel demanded to know how the country was better for 'causing these poor creatures to live in misery and often in vice?'.¹⁵⁷ It was in the community's interest, he argued, that divorce be made more widely available. Feminists argued that requiring men to observe the same standard of morality as women could only benefit society. They considered the equal divorce campaign a fundamental part of their wider quest to purify and strengthen public and private life. During debate in 1894 John MacGregor used the example of Scotland to prove

¹⁵⁴ *Ibid.*, p.455.

¹⁵⁵ *NZPD*, 72, 1891, p.218.

¹⁵⁶ Phillips, *Divorce in New Zealand*, p.30.

¹⁵⁷ *NZPD*, 58, 1887, p.461.

to his more pessimistic colleagues that relaxing the marriage laws would not necessarily lead to increased immorality in the community. Scottish law contained more extensive grounds for divorce than the English legislation but there was, MacGregor declared, 'no greater immorality in Scotland amongst married couples than in England'.¹⁵⁸

Party affiliations do not appear to have played a significant role in politicians' decisions to support or oppose divorce equalisation.¹⁵⁹ Reactions largely depended on personal religious convictions and politicians' personal beliefs about the nature of marriage and the sexual natures and roles of men and women. The Governments of the mid-1880s and 1890s, mindful of the controversial and divisive nature of divorce reform, shied away from the issue, leaving reform initiatives up to private members.¹⁶⁰ Fifty-six different politicians spoke on equal divorce in Parliament between 1885 and 1896. Of these, thirty-five supported reform and twenty-one opposed the change. Positions taken on equal divorce during the debates cut across party lines. Just as they were divided over women's suffrage, Liberals could be found on both sides of the equalisation debate. Of the twenty-three Liberal politicians who took an explicit stand on the issue in the parliamentary debates, fourteen supported the change and nine opposed reform. Four Conservatives and seventeen

¹⁵⁸ *NZPD*, 83, 1894, p.453.

¹⁵⁹ Occupation, birthplace and age similarly had little bearing on the way politicians voted.

¹⁶⁰ John MacGregor remarked in 1894 that the presence of Catholics in the Government meant that it would be a waste of time to wait for it to deal with such an important measure. Influential Ministers, such as Vogel in the late 1880s and Attorney-General P.A. Buckley in the mid-1890s, would always oppose government sponsored divorce reform: *NZPD*, 83, 1894, p.582.

Independents supported equal divorce while three Conservatives and nine Independents spoke out against the change.¹⁶¹

Increasing public and political recognition of female autonomy - demonstrated in the enactment of the 1884 Married Women's Property Act, in the Clitheroe case and successful women's suffrage Bill of 1893 - significantly contributed to the acceptance of equal divorce conditions for men and women. Support from the Protestant churches for this one aspect of divorce reform also played an important role in undermining the position of those who held out against change. International legislative developments also had an impact. During the 1880s and 1890s a number of Australian colonies followed the example of Scotland and equalised and liberalised their divorce legislation.¹⁶² The Scottish example and the Australian reforms provided New Zealand reformers with a blueprint for change and reassured waverers that New Zealand was not embarking upon a dangerous and untried experiment.¹⁶³ All of these developments played a part in convincing New Zealand's politicians to accept equalisation of the divorce laws.

Although equalisation of divorce was the central feature of the divorce reform campaign of the 1890s, the attention given to adultery and women's rights should not obscure

¹⁶¹ *NZPD*, 1880-1898. I have labelled politicians as Liberal, Conservative or Independent according to the listings made in J.O. Wilson, *New Zealand Parliamentary Record 1840-1984* (Wellington: Government Printer, 1985), pp.179-247, and in David Hamer, *The New Zealand Liberals: The Years of Power* (Auckland: Auckland University Press, 1988), pp.361-67. These listings refer to politician's political affiliations during the 1890s when political parties first became a major force in New Zealand politics.

¹⁶² New South Wales and Victoria led the way in Australia. See Golder, *passim*, regarding the development of Australian divorce legislation. For a comprehensive comparative study of divorce in the west see Phillips, *Putting Asunder*, *passim*.

¹⁶³ MacGregor outlined the Australian reforms and judicial and press opinions during debate in 1894: *NZPD*, 83, 1894, pp.453-461. English women had to wait until 1923 before they too could gain a divorce on the sole ground of a husband's adultery: Lewis, *Women in England*, p.78.

the fact that the 1898 Divorce Act expanded the grounds for divorce beyond simple adultery for husband or wife. In extreme cases of marital breakdown, where one partner manifestly failed to fulfil their marital obligations, the aggrieved or abandoned spouse would be given the opportunity to seek an end to the marriage. However, the limited grounds introduced in 1898 reveal a continued adherence to the general principle of the sanctity of marriage. Despite the reforms, access to divorce remained highly restricted; only in extreme cases would the state sanction the dissolution of a marriage.

III

The limited nature of the 1898 divorce reforms failed to satisfy a number of reformers. Supporters of more liberal grounds for divorce argued that the time periods required for divorce on the grounds of desertion, drunkenness or imprisonment were excessive. They also argued in favour of introducing additional grounds for divorce, including insanity and conviction for murder or attempted murder of the petitioner's child. Divorce Bills introduced in 1890, 1891, 1892 and 1896 had all contained clauses making a spouse's incarceration as a lunatic for three or four years grounds for divorce. Reformers dropped the clause in 1898 in order to facilitate the passage of the Divorce Act. However, leading Wellington divorce lawyer Thomas Wilford introduced Bills to allow divorce on the grounds of a spouse's insanity in 1900 and 1901.¹⁶⁴ George Laurensen continued the campaign, introducing similar Bills into the House in 1903, 1904, 1905, 1906 and 1907.¹⁶⁵

¹⁶⁴ Thomas Mason Wilford (1870-1939), Liberal MHR for the Suburbs of Wellington and a distinguished lawyer, was a staunch advocate of matrimonial law reform. Wilford also campaigned to amend the prohibited degrees of marriage and supported the legitimisation of children of *de facto* unions upon the marriage of their parents: *DNZB*, Vol.III, p.568; Mansell, p.92.

¹⁶⁵ George Laurensen (1857-1913), a left-wing Liberal, was the member for Lyttelton 1899-1913.

Attempts to include insanity as grounds for divorce are particularly significant for the light they shed upon attitudes towards state regulation of marital sexuality. Reformers offered two main justifications for adding insanity to the grounds for divorce. Firstly, long-term incarceration in an asylum could be seen as a form of desertion.¹⁶⁶ Secondly, and more importantly, reformers argued that the proposed measure would help limit the propagation of the 'unfit'. Inspired by eugenic ideology, reformers argued that it was in the state's interest to facilitate the divorce of men and women married to 'lunatics' in order to prevent such couples from having children.

The rise of eugenic theory introduced a significant new dimension to the divorce debates. Eugenics, the science of selective breeding, developed during the late nineteenth century within a context of growing concern over the health and welfare of national populations. The uncertainties in this period resulting from rapid social change, growing national rivalries and increased international tensions encouraged intense analysis of population quality and quantity.¹⁶⁷ Eugenic ideology appeared to provide solutions to the problem of how to prevent populations from becoming weak and degenerate. Eugenicists focused upon the role played by heredity in the production of society's defective and degenerate individuals. They supported active intervention in the production of populations. Advocates of 'positive eugenics' emphasised the need to encourage the fit and the healthy to

¹⁶⁶ NZPD, 111, 1900, p.530 (Wilford).

¹⁶⁷ For a detailed account of the eugenics movement in New Zealand see Phillip J. Fleming, 'Eugenics in New Zealand 1900-1940' (M.A. Thesis, Massey University, 1981), *passim*. On the rise of eugenics in Australasia see Carol Bacchi, 'Evolution, Eugenics and Women: the Impact of Scientific Theories on Attitudes towards Women, 1870-1920', in Elizabeth Windschuttle (ed.), *Women, Class and History: Feminist Perspectives on Australia 1788-1978* (Fontana/Collins, 1980), pp.132-39; and Stephen Garton, *Medicine and Madness: A Social History of Insanity in New South Wales 1880-1940* (Kensington: New South Wales University Press, 1988), pp.54-60.

breed, while supporters of 'negative eugenics' focused their attentions upon preventing the unfit and the degenerate from reproducing and perpetuating their defective lines.¹⁶⁸

Negative eugenics arguments appeared in divorce debates from the late 1880s. During debate over Oliver Samuel's 1887 Divorce Bill Dr Alfred Newman, the member for Thorndon, used his status as a doctor to argue in favour of the insanity clause. Dr Newman argued that the incurably insane 'should be deprived of the power of bringing into the world children who will be epileptics, paralysed or idiots, which, all medical men know, are the offspring of idiot parents'.¹⁶⁹ During the second reading debate of John Joyce's 1891 Divorce Bill, the member for Clutha, Thomas Mackenzie, stressed the dangers of allowing the insane to marry at all. Mackenzie supported the insanity clause and argued that

sociologically and physiologically, there are reasons why persons who have been many years insane should not marry ... We have to provide that we shall have in this country a healthy and vigorous population; and, that being so, I think the human race should be as much protected as what I will call the lower creatures of the colony. What do our agriculturalists do? Do they not endeavour to obtain the purest and healthiest strain? and is it not a travesty on the boasted civilisation of this century that so little care should be taken for the securing of a healthy human race? Can any one gauge the evils arising from persons marrying who are tainted with insanity?¹⁷⁰

¹⁶⁸ See Carl Jay Bajema, (ed.), *Eugenics: Then & Now* (Stoudsberg, Pennsylvania: Dowden, Hutchinson & Ross, Inc., 1976), pp.1-13, and Weeks, pp.128-138.

¹⁶⁹ *NZPD*, 58, 1887, p.458. Newman's views on racial decline have been described as extreme by John Stenhouse in 'A Disappearing Race Before We Came Here': Doctor Alfred Kingcome Newman, The Dying Maori, and Victorian Scientific Racism', *NZJH* 30:2 (October 1996), pp.124-40. However, a significant number of Newman's colleagues appear to have shared his views that the marriage of insane persons was not desirable from a racial point of view.

¹⁷⁰ *NZPD*, 72, 1891, p.221. Thomas Noble Mackenzie (1853-1930), the son of a Scottish gardener, worked at times as a clerk, storekeeper, surveyor and marketing agent. A Conservative in his early years in politics, Mackenzie became an Independent in 1900 and joined the Liberals in 1908: *DNZB*, Vol.III, pp.303-04.

Supporters of the insanity clause increasingly emphasised the eugenic dimension during debates over the divorce bills of the early 1900s. It was only too likely, they argued, that an insane spouse would become the parent of a similarly afflicted child. Divorce would help prevent 'the breeding of idiots by the fertility of the unfit'.¹⁷¹ The very least that the state could do was to allow healthy spouses to extricate themselves from potentially unhealthy unions.

Opponents of the insanity clause rejected such arguments in favour of the old doctrine of the sanctity of marriage. They argued that couples married 'for better, for worse, in sickness and in health'.¹⁷² The sane spouse, they declared, ought to support the afflicted husband or wife, not abandon him or her in favour of a less troublesome or more attractive marriage partner. Legislative Councillor William Beehan argued in 1905 that it was 'far manlier and more womanly ... to stick with the partner until death'. Beehan drew a bleak picture of mentally ill husbands and wives emerging from the asylum, having recovered their sanity, only to find themselves rejected and alone.¹⁷³ Beehan's fellow Councillor Francis Arkwright warned that allowing divorce on the grounds of insanity might all too easily lead to the granting of divorce for other diseases such as cancer or consumption.¹⁷⁴ Advocates of

¹⁷¹ *NZPD*, 139, 1907, p.324. In this speech, Wilford described his views on heredity in some detail. See also speeches in Parliament on divorce by John Rigg and James Bonar (1895); George Laurensen (1904); William Bolt, Charles Louisson and Francis Fraser (1905).

¹⁷² *NZPD*, 132, 1905, pp.655-56. Francis Arkwright, an Anglican, and William Beehan, a Roman Catholic, were the sole opponents of the 1905 Divorce Bill's second Council reading. Twenty eight of their fellows voted in favour of the Bill. William Bolt, the Bill's representative in the Council, rejected Arkwright and Beehan's objections as based purely on theological assumptions, without full consideration of the physiological implications of the issue, p.660.

¹⁷³ *Ibid*, p.656.

¹⁷⁴ *Ibid.*, p.655.

the clause rejected such a comparison. Freethinker Councillor William Bolt argued that insanity was a special case. Unlike cancer or consumption, he argued, insanity was a hereditary disease.¹⁷⁵ Councillor Charles Louisson emphasised the barrier that institutionalisation posed for the sane spouse. Husbands and wives could not assist or tend institutionalised partners as they could were the sufferer at home.¹⁷⁶ Such marriages were marriages in name only, and no good was done by compelling the sane spouse to remain legally tied to someone they could do nothing for.

In 1905 the Government referred the insanity clause to the Statutes Revision Committee for close scrutiny. The Committee received evidence from three eminent doctors: Dr Duncan MacGregor (brother of divorce reformer John MacGregor), Inspector of Asylums, Dr Gray Hassall, Superintendent of the Porirua Asylum, and Dr Frank Gray, Deputy Inspector of Asylums. The two psychiatrists, Hassall and Gray, both opposed divorce on the grounds of insanity and MacGregor declined to commit himself to specifics. Dr Hassall thought that some husbands and wives might conspire to keep their spouses incarcerated in order to gain a divorce, and Dr Hay reminded the Committee that husband and wife entered into the contract for better or for worse. However, Hassall, Gray and MacGregor all agreed that to allow the insane to reproduce posed a serious threat to the health of the nation. Whilst they did not support divorce on the grounds of insanity, they proved sympathetic towards suggestions that the insane be deterred from entering into marriage in the first place.¹⁷⁷

The reluctance of these three 'experts' to condone divorce on the grounds of insanity helped temporarily delay political acceptance of the insanity clause. However, two years later

¹⁷⁵ *Ibid.*, p.660.

¹⁷⁶ *Ibid.*, p.657.

¹⁷⁷ Phillips, *Divorce in New Zealand*, pp.37-38; Mansell, pp.88-91; Laws, pp.47-48.

both chambers of Parliament finally accepted insanity as grounds for divorce. In 1907 members of the House of Representatives voted overwhelmingly in favour of a Divorce Bill which included the insanity clause together with reduced time periods for desertion, drunkenness and imprisonment.¹⁷⁸ Incarceration in an asylum for ten of the twelve years preceding the divorce petition would henceforth be considered reasonable grounds for divorce, with the proviso that there must be little chance of the insane spouse's recovery.¹⁷⁹

The insanity clause of the 1907 Divorce Act, notable for its eugenic implications, was also highly significant for its breaching of the concept of fault inherent in existing divorce legislation. Up until this time legislators had maintained that the purpose of divorce was to give relief to an injured petitioner or to serve as punishment for the offending respondent. The insanity clause introduced a no-fault principle whereby those unfortunate to have been struck down by mental illness were placed in the category of 'guilty' respondent through no fault of their own.¹⁸⁰

However, although the insanity provisions in the 1907 Act significantly undermined the concept of matrimonial fault, legislators proved reluctant to allow further no-fault grounds for divorce. In addition to introducing the insanity clause into New Zealand's divorce legislation, the 1907 Act removed a loophole in the 1898 Divorce Act which had allowed divorce following non-compliance with an order for restitution of conjugal rights.¹⁸¹ Dissatisfied spouses, it was argued, had colluded with each other to obtain relatively quick

¹⁷⁸ Sixty-one of the sixty-eight members present in the House voted in favour of the Bill's third reading: *NZPD*, 142, 1907, p.932.

¹⁷⁹ Divorce and Matrimonial Causes Act Amendment Act, *NZ Statutes*, 1907. The Act contained the proviso that there must be little likelihood that the respondent would recover.

¹⁸⁰ Phillips, *Divorce in New Zealand*, pp.36-37.

¹⁸¹ This referred to a husband or wife's refusal to cohabit with his or her spouse.

and easy divorces. Couples would separate and one would obtain a decree for restitution of conjugal rights. The other would refuse to return, and in due course would be considered as having deserted his or her spouse. Divorce proceedings could then commence. Legislators repealed the clause in the 1907 Act and in doing so demonstrated a continued resolve to limit access to divorce to those with a particularly serious and justified grievance against their spouse. Divorce, they argued, was not for couples who had simply tired of each other. Politicians valued the institution of marriage too highly to relax its bonds for any but those most severely afflicted by its continuance.¹⁸²

IV

Between 1907 and 1925 politicians, women's organisations and doctors continued to express concern over the eugenic implications of marriage. From the 1910s, and especially from World War I, the impact of venereal disease on families became a major concern. Several commentators argued that for the sake of future generations, sufferers of venereal disease should be prevented from obtaining marriage licenses. Some commentators also suggested that venereal disease become grounds for divorce.¹⁸³ American laws requiring

¹⁸² Parliament enacted several other divorce reforms in 1912, 1913 and 1919 but these did not significantly alter the basis of New Zealand's matrimonial law. The 1912 Divorce and Matrimonial Causes Amendment Act reduced the insanity time period from ten to seven years. The 1913 Divorce and Matrimonial Causes Act declared that a husband's habitually leaving his wife without reasonable maintenance was tantamount to desertion. The 1919 Divorce and Matrimonial Causes Amendment Act reduced the period of desertion from five to three years where the respondent was a person of 'enemy origin'. Detailed discussion of these reforms lies outside the scope of this thesis.

¹⁸³ *NZMJ*, 1910, 8:33, p.12; WCTU Minutes, Annual Convention, Nelson, 12 March 1913 (MS Papers 79-057-09/11, ATL); WCTU Minutes, Annual Convention, Auckland, 23 March 1917 (MS Papers 79-057-09/11, ATL); *NZPD*, 177, 1916, pp.213-14; *NZPD*, 180, 1917, pp.636, 640, 645, 651, 658. Regarding venereal disease as grounds for divorce, see *NZPD*, 181, 1917, p.434 and Report of the 1922 Committee of Inquiry into Venereal Disease, *AJHR*, 1922, H-31A, p.20.

couples to obtain certificates of health before they could marry drew comments of approval from several politicians during debate over venereal disease legislation in 1917.¹⁸⁴ The Minister of Health, G.W. Russell, remarked upon the numbers of requests from women's organisations seeking the introduction of similar legislation in New Zealand. The Minister declared himself reluctant to follow the American example, but suggested that it was highly likely that the time would come when New Zealand be forced to enact similar provisions.¹⁸⁵ In 1922 the Committee of Inquiry into Venereal Diseases seriously examined the benefits to be gained from requiring engaged couples to obtain certificates proving themselves free of venereal or mental disease. Unwilling to subject women to the 'delicate and searching examination' required, the Committee proposed that couples be interviewed on the question instead. The Committee also suggested that Parliament consider following the example of Queensland which had made venereal disease grounds for annulling a marriage.¹⁸⁶

Despite the strength of eugenically-based concerns over the impact of venereal disease upon the wider community, the Government declined to amend the divorce laws or to introduce compulsory marital health certificates as a means of combatting venereal disease. Many politicians probably agreed with comments made on this issue by the President of the New Zealand branch of the British Medical Association in 1910: 'one can carry regulations too far when one interferes with the sacred rites of the people'.¹⁸⁷ While marriage had major ramifications for society as a whole, it still remained a largely personal and private contract.

¹⁸⁴ *NZPD*, 180, 1917, pp.636 (G.W. Russell), 640 (C.H. Poole), 645 (J.T.M. Hornsby), 651 (L.M. Isitt), 658 (G.W. Russell).

¹⁸⁵ *NZPD*, 180, 1917, pp.636, 658.

¹⁸⁶ *AJHR*, 1922, H-31A, p.20.

¹⁸⁷ *NZMJ*, 1910, 8:33, p.12.

Undue state interference in the institution was likely to prove highly unpalatable to many members of the public.

The final two Divorce Acts passed in this period ignored the issue of venereal disease. Although Parliament significantly eased the grounds for divorce in 1920 it failed to address the eugenic dimension of marriage. Championed by seasoned divorce reformers Oliver Samuel and John MacGregor, the 1920 Divorce and Matrimonial Causes Act introduced conviction for wounding the petitioner or child of the petitioner as new grounds for divorce. It also restored failure to comply with a decree for restitution of conjugal rights as grounds for divorce and allowed discretionary divorce after three years under a judicial separation or court order, provided one party was innocent of a matrimonial offence. The Minister of Justice and the Leader of the Opposition both supported this clause on the grounds that the existing legislation encouraged immorality: there was a danger under the present law that 'married persons who are no longer cohabiting as man and wife, may be induced to accept misconduct as the only "way out"'.¹⁸⁸

The Act significantly undermined the already strained principle of the sanctity of marriage. However, its passage through Parliament provoked little comment at the time. Only three politicians spoke at the Bill's second and third readings in the House.¹⁸⁹ The apparent lack of interest in the Bill may have resulted from sectarian tensions which encouraged more intense public and political concern in another aspect of matrimonial law.¹⁹⁰ In 1908 the Catholic Church had issued a decree requiring Catholics to be married by Catholic priests in order for their marriage to be considered valid. Many Protestants,

¹⁸⁸ *NZPD*, 189, 1920, pp.758-59.

¹⁸⁹ *NZPD*, 189, 1920, pp.758-61.

¹⁹⁰ Phillips, *Divorce in New Zealand*, p.42.

including the Bishop of Christchurch and the Presbyterian Assembly, objected to the *Ne Temere* decree on the grounds that it denied the validity of mixed marriages between Protestants and Catholics. Intense sectarian feeling during the 1900s and 1910s led to a campaign to introduce legislation to combat what was seen as a manifestation of the 'constant aggrandisement' of the Church of Rome.¹⁹¹ Parliament introduced the 1920 Marriage Amendment Act in response to the campaign. Under the Act it became a criminal offence to impute that a marriage considered valid in civil law was invalid, or that the children of the marriage were illegitimate.

Sidetracked by sectarian issues, it took some time for the public to grasp the implications of the 1920 divorce reforms. However, following publication of cases processed under the new law in 1921, public opposition to the restitution of conjugal rights and judicial separation clauses began to be heard. Newspapers, church members and the general public protested at the opportunities the clauses offered for collusion and divorce by mutual consent. Petitions against the 1920 reforms attracted signatures from 23,800 concerned individuals.¹⁹² The outcry provoked a swift response from parliamentarians suddenly made aware of the unpopularity of the new Divorce Act. The politicians promptly enacted new legislation to curtail the effects of the reforms of 1920. The 1922 Divorce and Matrimonial Causes Act gave the respondent the opportunity to counter the divorce action if

¹⁹¹ Allan K. Davidson, *Christianity in Aotearoa: A History of Church and Society in New Zealand* (Wellington: Education for Ministry, 1991), p.87. For the Catholic response to Protestant concerns, see H.W. Cleary (Bishop of Auckland) *The Marriage Law Amendment Bill* (Auckland; 1920) and *Catholics and the Marriage Laws: The Ne Temere Decree* (Wellington; second (revised) edition, 1920) (ATL). See also H.R. Jackson, *Churches and People in Australia and New Zealand 1860-1930* (Wellington: Allen & Unwin/Port Nicholson Press, 1987), pp.90-94.

¹⁹² Phillips, p.43.

it could be proved that the separation on which the divorce was based had resulted from wrongful conduct on the part of the petitioner. The 'innocent' spouse could thus prevent the 'guilty' partner from getting out of the marriage. A significant proportion of the public and the majority of politicians clearly remained firmly wedded to the principle of matrimonial fault embedded in New Zealand's divorce legislation.

V

Growing secularisation of New Zealand society underpinned the significant changes made to divorce law between 1880 and 1925. The New Zealand Marriage Act of 1854 had effectively secularised marriage by making provision for civil ceremonies.¹⁹³ However, many politicians continued to view marriage as a fundamentally religious union. Secularists challenged this perspective. Freethinking and rationalist politicians played a major role in divorce reform throughout the period with their arguments that marital law should be based on reason rather than religion. Desperate individuals should not be compelled to remain married to criminal, irresponsible or unfaithful partners on religious grounds alone. Social criteria, not religious doctrine, should govern divorce legislation. Organised secularism was at its peak in New Zealand and internationally from the late 1870s to the early 1890s.¹⁹⁴ Secularists at home and abroad argued in favour of the separation of church and state. Although this separation had largely been achieved in New Zealand by the end of the 1850s, colonial secularists pointed out that religion, rather than reason, still underpinned divorce legislation.

¹⁹³ Wood, p.264.

¹⁹⁴ Lincham, pp.65-68.

New Zealand legislators displayed an increased willingness to secularise colonial legislation during the late 1800s. Parliament acknowledged growing secularist sentiment in 1884 when it enacted the Affirmations in Lieu of Oaths Extension Act. The Act allowed politicians to affirm their allegiance to the General Assembly without having to swear an oath on the *Bible*.¹⁹⁵ A desire to avoid sectarian tensions also encouraged the development of secular legislation. The secularisation of the marriage law during the 1850s owed much to politicians' desire to place different religious denominations upon an equal footing with regard to marriage.¹⁹⁶ Rising sectarian tensions during the late 1870s similarly encouraged legislators to secularise state funded primary education.¹⁹⁷ This desire to maintain religious harmony encouraged a general acceptance of the principle of secularised legislation. While some politicians, such as ardent Catholic P.A. Buckley, continued to oppose divorce reform, a growing majority supported secularist arguments that social, rather than religious criteria, ought to govern colonial legislation. Growing eugenically-based concern over population quality during the early 1900s also encouraged legislators to pay greater attention to marriage's social and reproductive aspects. Fear over the reproduction of the unfit greatly assisted the passage of the 1907 Divorce Act.

Religious sentiment played a dual role in the divorce reform campaign of the late 1800s and early 1900s. Belief in a single standard of morality for men and women - a belief strengthened by the rise of the social purity movement - encouraged many Protestants to support the introduction of equal divorce conditions for men and women. However, many continued to believe that further change was unnecessary. Religiously-based belief in the

¹⁹⁵ Davidson, p.61.

¹⁹⁶ Wood, p.264.

¹⁹⁷ Davidson, p.65.

sanctity of marriage helped curtail further reform of divorce legislation during the early 1900s. Jeanine Graham has argued that 'Consciously or unconsciously the greater proportion of the population acted according to what was essentially a Christian code' and many politicians and members of the public continued to support the Christian concept of the sanctity of marriage despite the gradual secularisation of New Zealand society.¹⁹⁸ The public outcry in 1921 against the Divorce Act of 1920 reveals a considerable degree of public opposition to a completely secularised divorce system.

First wave feminism also played a major role in the campaign to introduce equal divorce conditions for men and women. The rise of companionate marriage encouraged women to expect greater social and legal equality within marriage. Feminists drew on liberal theory to argue for legal recognition of that equality. Social purity discourse provided feminists and their supporters with further justification for amendment of the divorce law. Debate over equal divorce during the 1880s and 1890s exposed a considerable ideological gulf between those politicians who accepted feminist equal rights arguments and those who clung to an older patriarchal and aristocratic property-focused ideology. The debates also reveal conflicting beliefs about the nature of male sexuality. Belief in a greater male physiological need for sexual release clashed with beliefs which focused on men's ability to exert sexual self control. Gradual feminisation of political discourse - particularly after the granting of women's suffrage in 1893 - critically undermined older patriarchal arguments which justified the sexual double standard.

¹⁹⁸ Jeanine Graham, 'Settler Society', in G.W. Rice (ed), *The Oxford History of New Zealand* (Auckland: Oxford University Press, 1992), p.129.

During the 1890s, a combination of secular, liberal, feminist, religious and social purity and secular discourses thus all combined to overthrow the sexual double standard enshrined in divorce law. Secular ideals continued to underpin divorce reform initiatives during the following decades. However, religious and social purity discourse acted more as a brake upon reform after the 1890s. From the early 1900s a new medical focus upon marriage partially replaced the moral focus dominant in the early debates. The introduction of insanity as grounds for divorce in 1907, together with suggestions during the 1910s and 1920s that engaged couples be supplied with certificates of health, demonstrated a new emphasis upon marriage as a site of reproduction. Growing concern over population quality encouraged some commentators to consider whether biological as well as moral considerations ought to play a part in shaping divorce law. Despite the medicalisation of marriage and increased secularisation of society, traditional belief in the sanctity of marriage remained paramount. Public opposition to the 1920 Divorce Act and legislators' swift amendment of the legislation revealed deep and persistent support for the fundamentally sacred nature of the marriage contract.

CHAPTER III

IN-LAWS AND INCEST

REDEFINING THE PROHIBITED DEGREES OF MARRIAGE

When introducing his Divorce Bill to the House of Representatives in 1885, Joseph Tole declared that his action had been inspired by the case of a woman whose husband had committed adultery with her sister. Tole, a Catholic, found the concept of adultery with a sister-in-law so appalling that in spite of his religious convictions against divorce he was prepared to expand the grounds for divorce to include 'incestuous adultery' with a wife's sister.¹ Tole's sense of revulsion against this particular form of adultery derived from beliefs that sexual relations between in-laws (affines) constituted a form of incest. Such beliefs formed the basis of a series of long-standing civil law prohibitions against marriages between widows or widowers and blood relations of their deceased spouses. Between 1871 and 1912 a number of politicians successfully challenged the validity of several of these prohibitions. In 1880 the New Zealand Parliament, over Tole's opposition, abolished the ban on marriages between widowers and their sisters-in-law. Twenty years later it abolished the prohibition against the remarriage of a widow with her deceased husband's brother. In 1905, Parliament similarly removed prohibitions against marriage with a deceased wife's niece or a deceased husband's nephew.

The debates over affinal marriage revolved around the issue of with whom, in the eyes of the state, it was proper to have sex. As the divorce debates have already revealed, the state

¹ *NZPD*, 51, 1885, pp.508, 511.

considered regulation of marital sexuality central to the maintenance of social order. Just as the dissolution of marriage was carefully regulated by the state, entrance into marriage was hedged about by strict rules regarding participants' ages and relationships. Late nineteenth-century debates over affinal marriage exposed fears that relaxing the prohibited degrees of marriage would undermine stable family relationships and unleash dangerous sexual tensions within families. The debates revealed significant tensions between reformers and their opponents over the nature of state regulation of marital sexuality. Commentators within and outside Parliament vigorously debated the principles they believed ought to govern state regulation of sexuality. Religious principles confronted secular ideals, and individualistic ideologies confronted arguments based on the wider social good. Scientific ideologies also shaped debates over spousal choice. The rise of secularism and scientific authority proved particularly potent forces for reform. Just as growing secularism aided the divorce reforms of the 1890s and 1900s, increased reluctance to place greater weight on theological rather than social considerations shaped debates over 'incestuous adultery' and 'marital incest'.

I

The foundations of prohibitions on marriages between affines can be found in early Christian canon law which was itself based upon biblical scriptures, older Jewish religious teachings and Roman civil laws.² Chapters 18 and 20 of the Old Testament Book of *Leviticus* listed a series of prohibited relationships including marriage with one's father's or brother's

² The original Jewish prohibitions were intended to prevent marriages between members of the same household. Early Republican Roman civil law forbade marriage between all related persons. In later years the law applied to the collateral line only to the third degree. The Church initially followed the more relaxed law of the later Roman period but gradually became more strict and extended the prohibitions to include such distantly related couples as sixth cousins: Cynthia Fansler Behrman, 'The Annual Blister: A Sidelight on Victorian Social and Parliamentary History', *Victorian Studies*, xi, 4 (June 1968), pp.484-86.

widow or with one's daughter-in-law or aunt. St Paul's writings also provided a basis for Church opposition to the marriage of affines. Paul had declared that sexual union made the couple 'one flesh'. The Church used Paul's writings to argue that a spouse's blood relatives were to be considered in the same light as one's own relatives. The same impediments to marriage applied.³ Henry VIII simplified the prohibitions in a series of statutes between 1533 and 1540 but retained the ban on marriage with a deceased wife's sister.⁴ In 1563, Archbishop Matthew Parker compiled a table of prohibited degrees which the Anglican Church took up as its official list in 1603. The table prohibited marriages between all those related 'in and within the third degree of consanguinity and affinity'.⁵ The common-law courts reinterpreted the Henrician statutes during the Restoration to allow marriage between cousins in the first degree, but prohibitions against affines remained in place in England well into the twentieth century.⁶

Until 1835 marriages contracted within the prohibited degrees were not considered automatically void in the eyes of church or state. Those seeking to declare the marriage invalid and its offspring illegitimate had to apply to the ecclesiastical courts for a ruling on the case. However, the involvement of the common-law courts from the 1690s resulted in the practice

³ Jesus' teaching (*Mark* X, 8) and the Old Testament (*Genesis* II, 24) provided the basis for Paul's argument: Behrman, pp.485-86.

⁴ Sybil Wolfram, *In-laws and Outlaws: Kinship and Marriage in England* (London & Sydney: Croom Helm, 1987), p.23.

⁵ *Ibid.*, p.26; Behrman, p.486. Consanguinity refers to a blood relationship. Affinity refers to a relationship created by marriage.

⁶ Randolph Trumbach, *The Rise of the Egalitarian Family: Aristocratic Kinship and Domestic Relations in Eighteenth-Century England* (New York/San Francisco/London: Academic Press, 1978), p.18. For more detailed discussion of the development of the prohibited degrees of marriage see Wolfram, pp.21-30; Roderick Phillips, *Putting Asunder: A History of Divorce in Western Society* (Cambridge: Cambridge University Press, 1988), pp.5-8, 41-43, 72-75; and Kenneth M. Boyd, *Scottish Church Attitudes to Sex, Marriage and the Family, 1850-1914* (Edinburgh: John Donald Publishers Ltd, 1980), pp.256-264.

whereby such marriages could not be declared void after the death of one of the spouses.⁷ In order to ensure the legitimacy and inheritance of their children, couples whose marriage fell within the prohibited degrees often arranged for a friend to challenge the legality of the union. No further challenges to the marriages could be heard until the courts had settled the first 'friendly' suit. The case could then be dragged out until the death of husband or wife, thus thwarting the genuine legal suits of unfriendly parties.⁸

In 1835 the English Parliament changed the rules regarding affinal marriages. Lord Lyndhurst, seeking to confirm the legitimacy of the son of the seventh Duke of Beaufort (who had married his deceased wife's half-sister), argued for a clarification of the law regarding 'voidable' marriages. He suggested a time limit be placed on challenges to such marriages in order to eliminate the inconvenience and hardship suffered by children whose legitimacy could not be confirmed while both parents lived. However, Lord Lyndhurst's colleagues substantially revised the Bill drafted for this purpose. The resultant Act validated all existing marriages contracted within the prohibited degrees, but declared all future marriages of this kind void from the start. Any children born of such a union would be considered illegitimate.⁹ The law change caused much agitation among the many who had come to accept marriage with a deceased wife's sister as a morally and socially acceptable union.¹⁰ It was argued that the reality for many

⁷ Wolfram, pp.28-29; Behrman, 487-8; Trumbach, p.18.

⁸ Behrman, p.488.

⁹ Nancy F. Anderson, 'The "Marriage with a Deceased Wife's Sister Bill" Controversy: Incest Anxiety and the Defense of Family Purity in Victorian England', *Journal of British Studies*, xxi, 2 (Spring 1982), p.67.

¹⁰ For a case study of plebeian marriage attitudes and practices in England before the passing of Lord Lyndhurst's Act see Polly Morris, 'Incest or Survival Strategy? Plebeian Marriage within the Prohibited Degrees in Somerset, 1730-1835', in John C. Fout (ed.), *Forbidden History: The State, Society, and the Regulation of Sexuality in Modern Europe* (Chicago & London: The University of Chicago Press, 1992), pp.139-169. See Trumbach regarding eighteenth-century English aristocratic attitudes to affinal marriage, pp.18-33.

ordinary people was that such marriages were a natural and logical means of filling the gap left by the death of a wife and mother. Who could be more suited to raise the motherless children than the mother's own sister?¹¹

From 1842 until the end of the century reform-minded politicians in England introduced Bills to legalise deceased wife's sister marriages in almost every parliamentary session. In 1847 the English Parliament appointed a royal commission of inquiry to investigate public attitudes towards marriages within the prohibited degrees. The Commission reported that public opinion generally opposed these unions.¹² Nevertheless, it came to the conclusion that marriage with a deceased wife's sister should be legalised as Lord Lyndhurst's Act had failed to deter couples from contracting such marriages.¹³ Parliament failed to act on the recommendation of the Commission and in 1851 reformers founded the Marriage Law Reform Association to lobby politicians and stimulate public support for change.¹⁴ The British colonies embraced the campaign during the 1870s and 1880s and enacted their own Deceased Wife's Sister Marriage (hereafter DWSM) Acts. However, staunch resistance from within the House of Lords effectively blocked the passage of an English DWSM Act until 1907.¹⁵

¹¹ Behrman, p.491. For detailed discussions of the English deceased wife's sister marriage campaign see Behrman, *passim*; Anderson, *passim*; and Wolfram, pp.30-40. See also Stephen Parker, *Informal Marriage, Cohabitation and the Law, 1750-1989* (New York: St Martin's Press, 1990), pp.79-85.

¹² Anderson, p.68.

¹³ Wolfram, p.31; Behrman, p.488.

¹⁴ Anderson, p.68.

¹⁵ The House of Lords rejected DWSM Bills passed by the House of Commons on eighteen occasions: Wolfram, p.40.

II

New Zealand's campaign to amend the prohibited degrees began in 1871 when G.M. Waterhouse introduced a Deceased Wife's Sister Bill into the Legislative Council.¹⁶ Waterhouse, a former Premier of South Australia, announced that his actions had been inspired by the recent passage of a DWSM Bill in that colony. He argued that for the sake of unity of law in the Australasian colonies New Zealand should pass similar legislation.¹⁷ The ban on such marriages, he argued, was of relatively recent origin. Prior to 1835 there had been no statute law declaring such marriages invalid. Although the Ecclesiastical courts could declare a marriage void, Waterhouse argued that they were seldom applied to:

[F]or all practical purposes, up to the year 1835, so far as the great bulk of the inhabitants of Great Britain were concerned, the usage, if not the law, was favourable to marriages of the kind referred to in this Bill.¹⁸

Marriages between widowers and their sisters-in-law had a long history which had been disrupted by the 1835 Act. Thus, removal of this impediment to marriage would not be a major innovation. Public opinion, he continued, did not condemn these unions. Widowers continued to marry their sisters-in-law despite the prohibition.¹⁹ The law, he protested, should reflect

¹⁶ NZPD, 10, 1871, p.156. Merchant and runholder George Marsden Waterhouse (1824-1906) was born in Cornwall, the sixth son of a Wesleyan clergyman 'of somewhat liberal views'. He was educated at an English Wesleyan college. Waterhouse emigrated to South Australia in 1839 and served as Premier in the South Australian Parliament from 1861 to 1863. He moved to New Zealand in 1869 and was elected to the Legislative Council the following year: ENZ, Vol.III, pp.590-591.

¹⁷ NZPD, 10, 1871, p.156.

¹⁸ *Ibid.*, p.157.

¹⁹ Wesleyan missionary George Buttle and Mehetabel Newman were one such couple. Mehetabel, the sister of George's first wife Jane, lived with the Buttles and looked after their children following Jane's death (possibly in childbirth) in 1857. George and Mehetabel married in 1874, six years before Parliament enacted the DWSM Act. For excerpts from Mehetabel's letters, see Frances Porter & Charlotte Macdonald, eds., *'My Hand will Write What My Heart Dictates': The Unsettled Lives of Women in Nineteenth-Century New Zealand as Revealed to*

social realities: 'when the legislation is of that character that it is repugnant to public sentiment, it is time you should alter it and bring it in accordance with public sentiment'.²⁰

Waterhouse's Bill passed its second reading in the Legislative Council by a majority of one but was not brought before the House of Representatives that year.²¹ However, William Jukes Steward, the foremost advocate of DWSM reform in New Zealand, introduced his own Bill into the House of Representatives in 1872.²² Steward explained to his colleagues that the experience of a childhood friend, whose own father had illegally contracted marriage with the child's much-loved maternal aunt, had given him the motivation to attempt the reform. He had that day, he declared, discharged a childhood vow that should he ever sit in a Legislature he would give his 'vote and voice ... for the repeal of so monstrous and tyrannical a law'.²³ Steward's Bill passed its third reading in the House only to be rejected in the Legislative Council by a majority of fourteen.²⁴ Subsequent DWSM Bills introduced into the House in 1873, 1874, 1875, 1877 and 1878 received similar treatment.²⁵ A majority of members of the House of

Sisters, Family and Friends (Auckland: Auckland University Press/Bridget Williams Books, 1996), pp.191, 242-43, 349-50, 506.

²⁰ *NZPD*, 10, 1871, pp.157-59.

²¹ *Ibid.*, p.163.

²² Liberal politician William Jukes Steward (1841-1912) was born in England and emigrated to New Zealand in 1862. He came from an old Non-conformist family: two uncles were ministers of the Congregational Church. Steward worked as a journalist in New Zealand and played an active role in the volunteer movement, reaching the rank of Major. Steward served as Mayor of Oamaru from 1876 to 1878: G.H. Scholefield (ed.), *Dictionary of New Zealand Biography*, Vol II (Wellington: Department of Internal Affairs, 1940), pp.332-33; *CNZ* Vol.I, pp.113-14.

²³ *NZPD*, 12, 1872, p.261.

²⁴ *NZPD*, 13, 1872, p.779.

²⁵ Steward introduced DWSM Bills into the House of Representatives every year between 1872 and 1875. Waterhouse presented Steward's Bills to the Legislative Council in 1872 and 1873. Henry Scotland introduced Steward's Bill of 1875 into the Council. Steward lost his parliamentary seat in the 1875/76 general election (he won it back in 1881). Samuel Hodgkinson consequently introduced the 1877 and 1878 DWSM Bills into the House. W.B.D.

Representatives regularly passed the Bills through all stages but the upper chamber just as regularly rejected the proposed change.

Opponents of reform within both chambers offered a range of religious and social objections to marriage with a deceased wife's sister. Theological arguments against reform had long featured in the English parliamentary debates. The core of the problem lay in the fact that *Leviticus* did not explicitly include marriage with a deceased wife's sister in its list of prohibited degrees of marriage; canon law had added this relationship to the list in later years. Although the Protestant churches had rejected Catholic Church doctrines and turned to scripture as the sole authority during the Reformation, some Protestants continued to cling to the deceased wife's sister marriage prohibition.²⁶ In England, opposition to reform largely came from defenders of the Anglican establishment who saw reform as a threat to church authority.²⁷ Support for reform primarily came from Dissenters and other individuals who believed that it was wrong for the state to require non-Anglicans to be bound by Anglican theological proscriptions. However, not all Dissenters favoured change nor did all Anglicans oppose reform. The Free Church of Scotland fiercely opposed the DWSM Bills while a number of leading English Anglican clergymen and politicians spoke in favour of removal of the prohibition.²⁸

Mantell presented these to the Council. William Sefton Moorhouse introduced the last DWSM Bill into the House in 1880. Mantell shepherded this final Bill through all stages in the Council.

²⁶ Behrman, p.489.

²⁷ Anderson, p.68; Parker p.83.

²⁸ Behrman, pp.493-98. See Boyd, pp.265-92, for a detailed discussion of Scottish Church opposition to removal of the prohibitions against marriages with affines. Reform-minded politicians in New Zealand had little difficulty in identifying and quoting leading English Anglican supporters of reform: *NZPD*, 12, 1872, pp.259-60; *NZPD*, 14, 1873, p.270; *NZPD*, 17, 1875, pp.202-03.

New Zealand parliamentarians were acutely aware of the English debates. They frequently referred back to the experience of the Mother Country and firmly placed the proposed reform in its wider imperial context. G.M. Waterhouse, a Wesleyan, clearly felt a need to confront the religious objections commonly expressed in the English Parliament when he first introduced the subject of deceased wife's sister marriages into the New Zealand Parliament. Waterhouse briefly outlined the religious origins and justifications of the prohibition against marriage with a deceased wife's sister but concluded that the scriptures did not themselves forbid such unions.²⁹ His repudiation of the scriptural basis for the prohibition did not go unchallenged. Legislative Councillor Dr Andrew Buchanan, a committed Anglican, turned to St Paul to justify the prohibition. '[O]ur Saviour', he argued, 'taught that in marriage man and woman became as it were one substance - "They no longer be twain; they be one flesh."' It followed that a wife's sister ought to be considered equally the sister of the husband. Marriage with a deceased wife's sister was, therefore, incestuous.³⁰ Legislative Councillor J.A.R. Menzies, a devout old school Presbyterian, also upheld the scriptural basis for the prohibition, arguing that since *Leviticus* explicitly prohibited marriages between widows and their deceased husband's brothers it could safely be assumed that the parallel relationship was also forbidden.³¹

Organised religious opposition to the DWSM Bills in New Zealand came primarily from southern Presbyterians, such as Menzies, rather than from conservative Anglicans. In 1873 Captain Thomas Fraser of Otago reminded his Council colleagues that Parliament had been inundated with anti-reform pamphlets from 'the southern part of the Colony, and mostly from

²⁹ *NZPD*, 10, 1871, p.158.

³⁰ *Ibid.*, p.160.

³¹ *NZPD*, 13, 1872, p.779. Behrman notes the use of similar arguments in England, p.489. See also Wolfram, p.35.

the Scotch people' the previous year. In Scotland, he argued, a man who married his sister-in-law would be 'hoted and stoned'. His own mind, he added, 'revolted against the idea of marriage with a deceased wife's sister'.³² The issue remained thorny for New Zealand's Presbyterians well after Parliament settled the issue in 1880. Until 1901 two separate Presbyterian Churches operated in the colony: the Presbyterian Church of Otago and Southland and the northern Presbyterian Church of New Zealand.³³ In 1883 the northern Church determined to leave the matter of deceased wife's sister marriages up to the consciences of the couples and ministers involved.³⁴ The southern Church continued to oppose deceased wife's sister marriages as contrary to the Articles of Faith of the Church.³⁵ The difference of opinion hindered the union of the two Churches for some years because the northern Church would not countenance union until the southern Church agreed to accept liberty of thought on the matter.³⁶ It was not until 1895 that the southern Church relented and granted its members the right to make up their own minds on the issue.³⁷

Reformers countered religious opposition to reform in several ways. Some, like Waterhouse, simply denied the validity of scriptural interpretations that supported the prohibition. Colonel De Renzie James Brett, an outspoken Irishman, bluntly dismissed Presbyterian opposition to reform, declaring in 1873 that 'he had not that respect for the

³² NZPD, 15, 1873, p.1220.

³³ J.R. Elder, *The History of the Presbyterian Church of New Zealand, 1840-1940* (Christchurch: Presbyterian Bookroom, 1940), p.158. The Waitaki River served as a geographical dividing line between the two Churches.

³⁴ Rev. John Dickson, *History of the Presbyterian Church of New Zealand* (Dunedin: J. Wilkie & Co./NZ Bible, Tract and Book Society, 1899), pp.288-89.

³⁵ Alana Birchall, 'Moral and Social Issues in the Presbyterian Church of Otago and Southland, 1894-1901' (B.A. (Hons.) Research Essay, University of Otago, 1981), p.42. See also Boyd, pp.261-63.

³⁶ Birchall, p.44.

³⁷ Elder, p.170.

Presbyterian religion which he otherwise would have had, because portions of its tenets had been dictated by man and not by God.³⁸ W.J. Steward, who came from a Non-conformist religious background, emphasised the support given to reform by a number of prominent English religious leaders including several Anglican bishops and the Chief Rabbi of the Jewish Synagogue in London.³⁹ In 1875 Steward declared that twenty-six spiritual peers, including two archbishops, had voted in the House of Lords in favour of reform. In addition, he remarked, the Roman Catholic Church, the Quakers and the heads of the leading dissenting churches - the Independents, Baptists, and Wesleyans - all accepted marriage with a deceased wife's sister as scripturally lawful.⁴⁰ Samuel Hodgkinson made similar claims when introducing his DWSM Bill into the House in 1877 but argued that theological objections were, in any case, largely irrelevant. The substance of the issue, he argued, was social, not theological.⁴¹

From the mid-1870s parliamentary opponents of reform increasingly abandoned scriptural objections in favour of social considerations.⁴² English politicians similarly turned away from scripturally based objections to deceased wife's sister marriage. New and higher biblical scholarship had undermined anti-DWSM interpretations of scripture while late-Victorian rationalism encouraged a focus on social rather than theological arguments.⁴³ Politicians increasingly argued that social realities rather than religious principles should guide legislation. A desire to avoid sectarian tensions also contributed to a shift towards

³⁸ *NZPD*, 15, 1873, p.1219.

³⁹ *NZPD*, 12, 1872, pp.259-60; *NZPD*, 14, 1873, p.270; *NZPD*, 17, 1875, pp.202-03.

⁴⁰ *NZPD*, 17, 1875, pp.202-203.

⁴¹ *NZPD*, 25, 1877, p.443.

⁴² *NZPD*, 17, 1875, p.646; *NZPD*, 25, 1877, p.653.

⁴³ Anderson, p.75.

secularisation of the legislation because Non-conformists and Catholics resented having to conform to legislation based upon Anglican doctrines.⁴⁴

Social objections to the marriages of widowers with their deceased wives' sisters derived from deep-seated fears that such unions would undermine the family unit by introducing new sexual tensions and jealousies into the family. In this period it was not uncommon for unmarried women to live with and assist their married sisters. Husbands, it was argued, considered their sisters-in-law in the same light as they viewed their own blood sisters. Opponents of deceased wife's sister marriage contended that removal of the prohibition would result in the destruction of this innocent and platonic relationship. Dangerous new sexual tensions would arise, sully the purity of the family home and seriously threatening family harmony.⁴⁵ During the second reading debate in the House in 1872, J.W. Thomson quoted an American clergyman on the dire results of removal of the prohibition in America:

"since such an increased nearness of connection has been deemed not improper and even desirable, there has grown up in families a perceptible and painful constraint, the children learning to look with apprehension on their mother's sisters, and the wives becoming jealous of their influence with their husbands, while familiarities which formerly were thought to be, and really were, innocent, have come to possess a consciousness of evil tendency which itself is of the nature of sin."⁴⁶

Lauchlan McGillivray supported Thomson, arguing that sisters-in-law would be forced to leave their brothers-in-law's homes if Parliament passed the Bill. When a wife became ill, he added, her sister would be unable to tend her without provoking `painful jealousies, suspicions, and

⁴⁴ See Chapter I, pp.24-26, and Chapter II, pp.83-85, regarding the rise of secularist sentiment in Britain and New Zealand.

⁴⁵ The same arguments were heard in the English Parliament: Wolfram, pp.33-34; Anderson, pp.77-79; Behrman, pp.491-92.

⁴⁶ *NZPD*, 12, 1872, p.262.

misunderstandings'.⁴⁷ Charles O'Neill speculated that the proposed reform 'would form the stepping stone to conspiracy against the wife, and even to murder.' Unscrupulous husbands and selfish sisters, he argued, might plot against innocent wives.⁴⁸ James Wallis declared in 1877 that removal of the prohibition would subject sisters-in-law to gossip and scandal. 'The sister-in-law', he argued, 'had been regarded as a sort of sacred personage; but if this Bill were passed her sacred character would be entirely done away with, and she would be brought within the region and range of men's animal passions.'⁴⁹ Opponents of reform maintained that an external restraint was necessary to prevent men from viewing their sisters-in-law as sexually available. Doing away with the prohibition, they argued, would muddy sexual boundaries within the family and destroy domestic peace.

Reformers rejected such arguments as illogical and lacking substance.⁵⁰ G.M. Waterhouse argued that only a man of 'debased mind' would speculate upon the possibility of marrying his wife's sister while his wife still lived.⁵¹ Councillor John Hall pointed out to his colleagues in 1877 that many single women other than wives' sisters might live with a couple for a time. First cousins and other relatives might equally inspire jealousy in a wife or lust in a husband and yet they were not forbidden to marry the widowed husband. A widowed father, Hall continued, needed a woman to look after his house and his children. If governesses and housekeepers did not forfeit their reputations by living in the house of a widower why should a sister-in-law fear scandal?⁵² Henry Chamberlin agreed. 'Mrs Grundy', he noted, 'was as likely

⁴⁷ *Ibid.*, pp.263-64.

⁴⁸ *Ibid.*, p.339.

⁴⁹ *NZPD*, 25, 1877, p.446.

⁵⁰ *NZPD*, 12, 1872, p.260.

⁵¹ *NZPD*, 10, 1871, p.158.

⁵² *NZPD*, 25, 1877, p.653.

to talk of one as of the other.⁵³ Advocates of reform challenged the view that the DWSM ban acted as an effective external restraint on men's 'animal passions'. Waterhouse remarked in 1873 that it would not necessarily be a bad thing if removal of the ban led to more constraint between husbands and their sisters-in-law. 'Brotherly' over-familiarity under the existing law could all too easily lead to 'sin'.⁵⁴

Several parliamentarians argued that the poor in particular suffered under the prohibition.⁵⁵ John Hall argued that a poor man could not afford to hire a housekeeper to look after his children. It was only natural that his deceased wife's sister should keep his house and mind the children. Given the nature of the cramped accommodation of the poor it was highly likely that a more intimate relationship would arise between the man and his sister-in-law. Preventing a marriage between the two, he declared, would encourage, not discourage, immorality.⁵⁶ Reformers argued that the rich could hire housekeepers and governesses to look after motherless children. Wealthy widowers also had the option of travelling abroad and marrying in a country where such marriages were not proscribed.⁵⁷ Steward noted that all a man had to do to contract such a marriage was to travel to South Australia, purchase forty acres of land, hold it for a few days or weeks and then marry under South Australian law. Any man who had £70 or £80 could get around the prohibition.⁵⁸

Opponents rejected these arguments. Reform, they objected, was intended to serve the interests of a few wealthy individuals who had contracted marriages with their sisters-in-law but

⁵³ *Ibid.*, p.668.

⁵⁴ *NZPD*, 15, 1873, p.1222; *NZPD*, 25, 1877, p.658.

⁵⁵ Henry Chamberlin was most eloquent on this point: *NZPD*, 25, 1877, pp.668-669.

⁵⁶ *Ibid.*, p.655.

⁵⁷ *Ibid.*

⁵⁸ *NZPD*, 12, 1872, p.260.

who were not willing to face the legal consequences of having done so.⁵⁹ New Zealand politicians lacked any real information about the prevalence of deceased wife's sister marriage in the colony or about the class of those involved. They derived much of their class-based evidence, and their arguments, from the English context.⁶⁰ In 1872 James Thomson used the report of the English Royal Commission of 1847 to argue that it was the well-off, not the poor, who contracted illegal marriages. Of 1,648 marriages contracted within the prohibited degrees, he declared, only forty had involved poor couples.⁶¹ Thomson failed to mention that the investigators had largely confined their inquiries to the 'middle ranks' of society.⁶² Legislative Councillor George Whitmore agreed that rather than protecting the morals of the poor, reform would 'gratify the desires of the rich'. After all, he declared, it was not the poor who agitated for reform in England and who sent pro-reform circulars to New Zealand parliamentarians.⁶³ According to Edmund Barff, member for Hokitika, the agitation stemmed from 'the simple fact ... that there were two or three cases in the old country where very large inheritances entirely depended upon legitimising bastards.' The reform movement, he argued, had nothing to do with the colony.⁶⁴

Opponents of deceased wife's sister marriage argued that New Zealanders neither needed nor wanted reform. They maintained that there were few marriages of this type in New Zealand and regularly reminded their colleagues that Parliament had received no public

⁵⁹ *NZPD*, 10, 1871, p.161; *NZPD*, 28, 1878, p.529.

⁶⁰ For the English context see Behrman, pp.490-93; Anderson, pp.80-81.

⁶¹ *NZPD*, 12, 1872, p.262.

⁶² Behrman, p.493.

⁶³ *NZPD*, 25, 1877, pp.650-651.

⁶⁴ *Ibid.*, p.447.

petitions on the subject.⁶⁵ Advocates of reform brushed these objections aside. Waterhouse argued in 1871 that 'there were obvious reasons' why couples would keep quiet about their illicit unions. What couple would wish to advertise that their marriage was of dubious legality? In any case, he added, his concern was more for 'the large number' of couples who wished to marry rather than for those had already done so.⁶⁶ W.J. Steward accepted that these marriages were not numerous. Nevertheless, he argued, 'there were cases of great and painful suffering under the existing law'. That there had been no apparent public demand for reform from New Zealanders was irrelevant; most people remained unaffected by the ban and felt no need to voice an opinion on the matter. Furthermore, he argued, removal of the prohibition was a matter of principle: his was 'a just and righteous cause'.⁶⁷

When colonial politicians referred to 'public opinion', they generally had the opinions of European settlers in mind. During the many debates on sexual and moral issues in this period, the European members of Parliament displayed a distinct lack of interest in, or concern about, the views and attitudes of Maori. Until the 1950s most Maori lived in isolated rural districts where they had little contact with European communities.⁶⁸ The European-dominated Parliament, primarily concerned with urban problems and with the welfare of the colonial population, generally ignored Maori sexual and social behaviour. Maori politicians themselves seldom participated in debates over sexual and moral issues. Unusually, however, the DWSM controversy prompted comment from several of the Maori politicians. In 1873 Legislative

⁶⁵ *NZPD*, 12, 1872, p.264. *NZPD* 1871 (Fraser, Grace, Holmes); 1872 (Thomson, Stafford, O'Neill, McGillivray); 1873 (McGillivray); 1875 (Pyke); 1877 (Pollen).

⁶⁶ *NZPD*, 10, 1871, p.163.

⁶⁷ *NZPD*, 12, 1872, pp.265-66; *NZPD*, 14, 1873, pp.272-73.

⁶⁸ Ian Pool, *The Maori Population of New Zealand 1769-1971* (Auckland: Auckland University Press/Oxford University Press, 1977), p.28.

Councillor Wiremu Tako Ngatata spoke in favour of removal of the prohibition.⁶⁹ 'Marriage with a deceased wife's sister was a Maori custom', he declared. 'When a wife died, a man could marry the sister, who would be able to take care of the children, lest he should marry a strange woman who would take no care of the children'. Ngatata declared that he himself had married his deceased wife's sister.⁷⁰ The marriage had taken place in 1853, several years before Ngatata converted to Catholicism.⁷¹ However, aside from the pro-reform W.B.D. Mantell, who commended Ngatata for his 'manliness' in stating his opinion, Ngatata's Council colleagues failed to respond to his remarks.⁷²

Maori politicians in the lower chamber did not speak out on the question until 1880. That year, three of the four Maori MHR's declared themselves opposed to the measure. Henare Tomoana agreed that such marriages had been customary in traditional Maori society but argued that since the arrival of the missionaries Maori had set the practice aside.⁷³ Hone Mohi Tawhai declared that the proposal

⁶⁹ Wiremu Tako Ngatata (1815-1875), an influential Te Ati Awa leader, played a significant role in land negotiations from the 1840s. He initially supported the King movement but later distanced himself when his attempts at keeping the peace lost ground among Maori. He was appointed to the Legislative Council in 1872 and was much respected by his colleagues. Ngatata converted to Catholicism in the early 1860s: *DNZB*, Vol.I, pp.313-15. See Bruce Biggs, *Maori Marriage: An Essay in Reconstruction* (Wellington: A.H. & A.W. Reed, 1970), pp.23-29, regarding exogamy and endogamy in traditional Maori society.

⁷⁰ *NZPD*, 15, 1873, p.1221.

⁷¹ Ngatata had already experienced some tension over the conflicting demands of Maori and European marital conventions. Maori custom expected a major chief to have several wives. As a Christian Ngatata was restricted to one wife: *DNZB*, Vol.I, p.315.

⁷² *NZPD*, 15, 1873, p.1221.

⁷³ *NZPD*, 37, 1880, pp.136-137. Henare Tomoana (c.1820s/30s-1904), a Ngati Kahungunu and Ngati Te Whatu-i-apiti leader, fought for the Government against Te Kooti during the 1860s. He converted to Christianity sometime before 1852. Tomoana was elected to the House of Representatives in 1879 (Eastern Maori) and played a significant role in bringing about the 1883 Native Committees Act. His moderate views were recognised by the Government and in 1898 he was made a member of the Legislative Council: *DNZB*, Vol.II, pp.544-46.

reminded him of the old practice of sending a messenger before a war-party, who, when he met the enemy, would say, "Return, for here comes a war-party, and you will perish." This Bill had met the Maoris and said, "Go back to your old customs." It reminded him, also, of the saying of a wise person of ancient days, who said, "You shall be born again in the spirit." This Bill, in similar language, said to the Maoris, "You must return again to your vomit."⁷⁴

Ihaia Tainui concurred.⁷⁵ He opposed the Bill, he declared, because 'he entertained the idea that honourable members intended to bring the Maoris back to their original state', when Maori had 'endeavoured as far as they possibly could to raise themselves to the European standard'.⁷⁶

The one remaining Maori MHR, Wiremu Te Wheoro, displayed greater scepticism than Tomoana, Tawhai and Tainui regarding European teachings. Te Wheoro noted that the missionaries had attempted to suppress deceased wife's sister marriage but dryly remarked that

The Church taught the Maoris in those days to "fix their eyes on things above;" but, although they followed out [*sic*] what was told them by the ministers and looked up into the firmament, the ministers themselves looked out on things below.⁷⁷

Te Wheoro forthrightly rejected the view that the DWSM Bill heralded a descent into barbarity.⁷⁸ Following in the footsteps of Ngatata, Te Wheoro championed Maori tradition.

⁷⁴ NZPD, 37, 1880, p.138. Hone Mohi Tawhai (c.1834-1894), a leader of Nga Puhi, is thought to have attended a local mission school and to have had some association with local Wesleyan missionaries in his youth. He became a member of the House of Representatives in 1879 (Northern Maori) and spoke forthrightly on a wide range of issues. A staunch advocate of Maori rights, Tomoana urged moderation and adherence to proper legal and parliamentary processes: DNZB, Vol.II, pp.508-509.

⁷⁵ A son of the celebrated Ngai Tahu chief Werita Tainui, Ihaia Tainui represented Southern Maori in the House of Representatives between 1879 and 1881. Ngai Tahu had come under the influence of Christianity during the late 1830s: Scholefield, Vol.II, p.358.

⁷⁶ NZPD, 37, 1880, p.139.

⁷⁷ NZPD, 37, 1880, p.138.

⁷⁸ Wiremu Te Morehu Maipapa Te Wheoro (?-1895), a Waikato leader, served as an intermediary between the government and the King movement from the mid-1860s. He was an assessor of the Native Land Court; served as major in the government forces from 1873; was appointed a native commissioner in 1875; and in 1884 travelled to England to discuss Maori grievances with the Queen and her ministers. Te Wheoro was elected to Parliament in 1879 (Western Maori) where he vigorously defended Maori rights and interests. He advocated local

Most Maori, he argued, approved of deceased wife's sister marriages. A woman considered it her duty to marry her widowed brother-in-law for she regarded herself the proper protector of her sister's children. 'Nothing', he declared, 'pleased him better than to see the Europeans going in the direction of Maori customs'. European reformers also argued that a dead wife's sister was the best person to care for her children, but only one, W.B.D. Mantell, used the example of traditional Maori society to support his case. Mantell suggested in 1873 that his colleagues 'ought to pay some deference to customs which had been observed in the country from time immemorial', particularly when those customs were more sensible than those of England.⁷⁹ Most colonial reformers no doubt considered that this was not an argument likely to sway their more conservative colleagues. Overall, the Maori parliamentarians' contributions to the debate had little impact on their fellow politicians. The championing of Maori customs by Ngatata and Te Wheoro had little appeal for Eurocentric colonials while the opposition expressed by Tomoana, Tawhai and Tainui in 1880 came too late to have any real impact on the debate.

The argument that sisters-in-law made the best stepmothers for their motherless nieces and nephews met with stiff opposition from anti-DWSM politicians who countered that such a marriage transformed the devoted aunt into a wicked stepmother.⁸⁰ As Legislative Councillor and active Presbyterian J.A.Bonar argued in 1877:

self-government for Maori. Te Wheoro had had land confiscated by the Crown and battled hard for its return. As the years passed he became increasingly disillusioned with Pakeha institutions: *DNZB*, Vol.I, pp.524-526.

⁷⁹ *NZPD*, 15, 1873, p.1221. Mantell had close involvement with Maori communities and was rumoured to have a Maori mistress: James Belich, *Making Peoples: A History of the New Zealanders from Polynesian Settlement to the End of the Nineteenth Century* (Auckland: Allen Lane/The Penguin Press, 1996). See also *DNZB*, Vol.I, pp.267-68.

⁸⁰ *NZPD*, 10, 1871, p.160 (Buchanan); 12, 1872, p.262 (Thomson); 14, 1873, p.271 (McGillivray); 15, 1873, p.1221 (Acland); 17, 1875, pp.651-52 (Menzies, Robinson); 25, 1877, pp.651, 670 (Bonar, Whitmore); 35, 1880, p.398 (Whitmore).

While the deceased wife's sister might be the natural guardian as long as she simply remained the deceased wife's sister, yet if she got married to her brother-in-law, and had a family of her own, she then ceased to be the guardian of her sister's children and simply took the position of step-mother; and honourable gentlemen knew what that was.⁸¹

The honourable gentlemen evidently did know what that was. 'If there was an unhappy relationship in life', declared the anti-reform Legislative Councillor George Whitmore in 1880, 'it was that existing between step-mother and step-child.' 'In many instances', he declared, 'the step-parent was so cruel that the child had to find refuge outside the house'. If the aunt became the stepmother, Whitmore continued, the unhappy children would be denied the possibility of taking refuge with their maternal grandparents, for they would no doubt side with their daughter in any dispute.⁸² Opponents of reform held that the stepmother would inevitably place her own children's interests above those of her dead sister's children. Her maternal instincts - roused in instinctive defence of her own natural children - would poison her feelings towards her nieces and nephews.

The pro-reform William Swanson did not deny the generally malign nature of the stepmother. 'It was proverbial', he remarked, 'that the stepmother was harsh, and at times cruel'. He argued, however, that it was the un-related second wife who posed the threat to vulnerable children, not the children's aunt. The memory of her sister, he argued, would encourage the aunt-stepmother to look more kindly upon the children. The stranger-stepmother was far more likely to see the children as threatening the interests of her own offspring.⁸³ However, most reformers down-played or ignored the malignant-stepmother aspect of the debate. They focused instead on the positive aspects of the aunt-child relationship. Several maintained that many

⁸¹ *NZPD*, 25, 1877, p.670.

⁸² *NZPD*, 35, 1880, p.398.

⁸³ *NZPD*, 12, 1872, p.342.

wives and mothers actively wished their sisters to take their place should they die prematurely. Far better that a sympathetic sister should take her place than an unpredictable stranger.⁸⁴

The principles of personal liberty and freedom of choice also drew the attention of reformers. Why should the state have the power to dictate whom a man could marry when there were no physiological reasons to prohibit marriage? Henry Chamberlin argued in 1878 that it seemed 'an unrighteous interference with a man's conscience to say that he should not be permitted to marry whom he liked, provided there was no blood relationship'.⁸⁵ Chamberlin argued that a widowed father, fully acquainted with his sister-in-law's disposition and character, could confidently determine whether or not she would make a good mother for his children. The bereaved father could not be so confident of the merits of another woman. He ought to have the right to marry his sister-in-law should he deem this to be in his own and his children's interests.⁸⁶

The rights of the individual also featured in debate over the prohibition's implications for the inheritance of property. Those in favour of reform argued that children of men who had married their sisters-in-law suffered materially, as well as emotionally, from being labelled illegitimate. The law unjustly penalised the children of these marriages by depriving them of their 'natural rights' to inherit property.⁸⁷ Colonel Brett argued that it would be an act of 'liberality and generosity' to legitimise these children. People persisted in contracting these

⁸⁴ *NZPD*, 12, 1872, pp.260-61 (Steward); *NZPD*, 17, 1875, p.647 (Brett); *NZPD*, 25, 1877, pp.563,654 (Swanson, Hall).

⁸⁵ *NZPD*, 29, 1880, p.671.

⁸⁶ *NZPD*, 25, 1877, p.668.

⁸⁷ *NZPD*, 10, 1871, p.162.

marriages despite the law, and retaining the ban simply meant that innocent children were 'disabled' from inheriting property in the colony.⁸⁸

Opponents of reform also addressed concerns over inheritance. However, they focused on the problems reform would cause with regard to inheritance of property in England. That the English Parliament had yet to legalise marriage with a deceased wife's sister proved to be a major stumbling block for the reform campaign. Supporters of the prohibition maintained that while the ban remained in force in England it would be foolish to remove it in the colony. As Dr Buchanan argued in 1871,

Persons might marry in New Zealand, live here for years, beget children, and then go to reside in Great Britain, when they would be horrified to find that in the eye of the law their connection was regarded only as concubinage, and their children as bastards.⁸⁹

Julius Vogel opposed the DWSM Bill of 1873 on these grounds. Vogel, however, urged the enthusiastic reformer W.J. Steward 'not to abate his ardour in the cause, but simply to suspend it, perhaps for only a very few months'. Vogel considered it inevitable that the Imperial parliament would abolish the prohibition and indicated that once the Imperial Parliament had shown the way he would be quite willing to support the measure.⁹⁰

That the offspring of colonial deceased wife's sister marriages might be barred from inheriting property in England was a genuine concern. Although the United Kingdom acknowledged the validity of legally contracted colonial deceased wife's sister marriages, British law barred the offspring of these marriages from inheriting English titles and estates. It was not until 1906 that the British Parliament rectified the anomaly by enacting the Colonial Marriage

⁸⁸ *NZPD*, 25, 1877, p.652.

⁸⁹ *NZPD*, 10, 1871, p.218.

⁹⁰ *NZPD*, 14, 1873, p.271.

Act. Under the Act, children considered legitimate under colonial law would be considered legitimate in the Mother country.⁹¹

Advocates of reform agreed that it would be best if the Imperial Parliament led the way but did not consider British action a prerequisite for reform in New Zealand.⁹² They urged their fellows to follow the lead of the Australian colonies, New Zealand's closest neighbours.⁹³ South Australia had legalised marriage with a deceased wife's sister in 1870 and Victoria, Tasmania and New South Wales had followed its example by 1873.⁹⁴ Two years later, W.J. Steward was able to inform his colleagues that Canada, the Cape Colony and the remaining Australian colonies had all abolished the prohibition.⁹⁵ The reformers also maintained that public and political opinion in England increasingly favoured removal of the ban against deceased wife's sister marriages. It was only the House of Lords, they argued, which stood in the way of reform at 'Home'.⁹⁶ Although, like Vogel, they believed that Britain would eventually abolish the prohibition, they did not believe that New Zealanders need wait for that day. Supporters of marriage with a deceased wife's sister accepted the desirability of uniformity in marital law within the Empire, which would best be achieved, they argued, if New Zealand followed the example of its fellow colonies.

Despite the optimistic predictions of the New Zealand reformers, Britain did not enact its own DWSM Act until 1907. The delay can largely be attributed to the power wielded by the

⁹¹ Behrman, p.495.

⁹² *NZPD*, 10, 1871, p.162.

⁹³ *Ibid.*, p.156.

⁹⁴ *NZPD*, 14, 1873, pp.270, 272.

⁹⁵ *NZPD*, 17, 1875, p.202.

⁹⁶ *NZPD*, 12, 1872, p.258 (Steward); *NZPD*, 25, 1877, p.656 (Hall); *NZPD*, 28, 1878, p.528 (Mantell).

conservative Anglican establishment in the House of Lords.⁹⁷ However, changing social conditions may also have played a significant role. Nancy Anderson has argued that during the mid to late nineteenth century there was a very real possibility that English widowers would wish to marry their sisters-in-law. The imbalance in the sex ratio had resulted in many young unmarried women residing with their married sisters. Given the relatively high rates of maternal mortality, the sister-in-law was likely to be left caring for the children should their mother die. Her brother-in-law might well look to her to replace her deceased sister as wife as well as mother. The reduction in maternal mortality rates, alongside wider employment opportunities for 'redundant' women in the early twentieth century, reduced the likelihood of this scenario. Anderson has argued that as a consequence of this and other factors, the idea of marriage with a deceased wife's sister became less disturbing.⁹⁸

Little is known about family structure in the Australasian colonies.⁹⁹ Much research remains to be done before it can be known how common it was for unmarried women to take up

⁹⁷ Behrman, p.490, 496-97; Ronald Pearsall, *The Worm in the Bud: The World of Victorian Sexuality* (London: Pimlico, 1993 reprint), p.138.

⁹⁸ Anderson, pp.73, 84-85.

⁹⁹ For some general views on European family structure in colonial New Zealand see S. Houston (ed.), *Marriage and the Family in New Zealand* (Wellington: Sweet and Maxwell, 1970), pp.21-65; Miles Fairburn, *The Ideal Society and its Enemies: The Foundations of Modern New Zealand Society, 1850-1900* (Auckland: Auckland University Press, 1989), pp.162-168; Erik Olssen & Andree Levesque, 'Towards a History of the European Family in New Zealand', in P.G. Koopman-Boyden (ed.), *Families in New Zealand* (Wellington: Methuen, 1978); K.A. Pickens, 'Marriage Patterns in a Nineteenth Century British Colonial Population', *Journal of Family History* 5:2 (Summer 1980). On 1840's Auckland see P.H. Curson, 'Household Structure in Nineteenth Century Auckland', *New Zealand Geographer* 32:2 (October 1976). The family structure and kinship networks of the Nova Scotian settlement at Waipu (an atypical but interesting example of a European community in New Zealand) have been examined in some detail. See Maureen Molloy, '"No Inclination to Mix With Strangers": Marriage Patterns Among Highland Scots Migrants to Cape Breton and New Zealand, 1800-1916', *Journal of Family History* 11:3 (1986), and 'Friends, Neighbours, and Relations: The Practice of Kinship in Waipu, New Zealand', *Journal of Family History* 14:4 (1989). For the

residence in their married sisters' houses. One study of the Presbyterian Nova Scotian settlement of Waipu reveals several cases of a cousin of the deceased wife being placed in the bereaved family to care for the children. In three cases the widowed father married his deceased wife's cousin. No mention is made of the possibility of a sister of the deceased wife entering the household.¹⁰⁰ Claire Toynbee's study of early twentieth-century family life notes that farming families often placed 'spare' daughters in other, sometimes unrelated, households. The author notes two cases where a mother's sister moved in to help at a time of crisis, but she concludes that long term co-residence with kin was uncommon among middle-class families.¹⁰¹

That the Australasian campaigns for reform were considerably less fraught than British campaigns can be attributed to two main factors. Firstly, religious opposition to reform lacked the strength of that in Britain where powerful members of the Anglican establishment, including the Archbishop of Canterbury and the Bishop of Oxford, effectively campaigned against reform for many decades. Although colonial reformers were able to identify a number of prominent Anglicans in Britain who supported legalising marriage with a deceased wife's sister, many other influential members of the Church, including members with voting rights in the House of Lords, balked at the proposed amendment.¹⁰²

More importantly, the question was less charged because it was less likely in the colonies that unmarried women would reside with married sisters for an extended length of time. Until the twentieth century men outnumbered women in each of the Australasian

early twentieth century see Claire Toynbee, *Her Work and His: Family, Kin and Community in New Zealand, 1900-1930* (Wellington; Victoria University Press, 1995).

¹⁰⁰ Molloy, 1989, pp.318-321.

¹⁰¹ Toynbee, pp.57-59, 128-129.

¹⁰² Behrman, pp.489-90, 493; Anderson, p.68.

colonies.¹⁰³ Consequently they lacked the significant numbers of 'redundant' women found in Britain in this period. Most women in the colonies married, and at a relatively young age.¹⁰⁴ It was thus less likely that there would be young unmarried women lingering in their married sisters' homes, ready to take their place should they die prematurely.

Throughout the DWSM campaign opponents of reform expressed their fears that removal of the prohibition against marriage with a deceased wife's sister would inevitably lead to the downfall of the remaining restrictions. Opponents regularly invoked the spectres of a widow marrying her deceased husband's brother and a widower marrying his deceased wife's niece, aunt, mother or even his step-daughter. Legislative Councillor Dr Buchanan feared that 'free trade in marriage' would result from any loosening of the affinal prohibitions. Buchanan pointed to the lack of restrictions on marriage with affines in many of the European countries. Protestant Germany, he noted, sanctioned marriage with a deceased wife's niece. The laxity in European marriage laws he argued had started with the removal of the ban on marriage with a sister-in-law: 'What was at first a little rivulet, had by degrees swollen into a torrent, which had swept before it all the landmarks of religion and morality'.¹⁰⁵ Opponents also condemned the partial nature of the proposed reform. If Parliament abolished this one restriction on the grounds of no consanguinity, then logically, no other affinal marriage could be condemned.

¹⁰³ *New Zealand Yearbook*, 1915, p.110; Gordon Carmichael, 'So Many Children: Colonial and Post-Colonial Demographic Patterns', in K. Saunders & R. Evans (eds.), *Gender Relations in Australia: Domination and Negotiation* (Sydney: Harcourt Brace Jovanovich, 1992), p.107.

¹⁰⁴ Miriam Gilson, 'The Changing New Zealand Family: A Demographic Analysis', in S. Houston (ed.), *op. cit.*, pp.46-47.

¹⁰⁵ *NZPD*, 10, 1871, pp.159-160.

They would be opening the floodgates to incest. Where, they asked, would Parliament draw the line?¹⁰⁶

Reformers generally ignored these objections. Only Colonel Brett and W.J. Steward explicitly addressed the charges. Brett argued in 1871 that his colleagues need not worry that reform would ultimately lead to incestuous relations between blood relatives, for 'There was no member of the House more opposed than he was to intermarriage, as he knew the bad results which attended it had caused half the diseases which flesh is heir to'.¹⁰⁷ Steward dismissed his opponents' domino theory as absurd. Suggestions that a man might wish to marry his stepmother did not, he declared, merit a response.¹⁰⁸ However, in reply to the charge that marriage with a deceased husband's brother must inevitably follow marriage with a deceased wife's sister, Steward remarked that he would have no objection if it did.¹⁰⁹ In sympathy with Brett over the dangers of inbreeding, Steward argued that it made no sense to object to affinal marriage when first cousins could marry. Such marriages provided a 'large number of the cases in idiot and lunatic asylums' he declared, and yet the Church still sanctioned them. Why should marriages between non-blood relatives be considered incestuous when church and state sanctioned the marriage of first cousins?¹¹⁰

¹⁰⁶ *NZPD*, 12, 1872, pp.262-63 (Thomson, McGillivray); *NZPD*, 14, 1873, pp.270-71 (McGillivray); *NZPD*, 17, 1875 pp.205, 648 (Pyke, Holmes); *NZPD*, 37, 1880, pp.136, 138 (Bowen, Wallis).

¹⁰⁷ *NZPD*, 10, 1871, p.159. Brett expressed similar sentiments in 1875: *NZPD*, 17, p.647.

¹⁰⁸ *NZPD*, 12, 1872, p.265.

¹⁰⁹ *Ibid.*, p.260; *NZPD*, 14, 1873, p.272.

¹¹⁰ *NZPD*, 12, 1872, p.259. Marriage between first cousins had been prohibited as incestuous until 1660. Disapproval of these unions persisted, particularly among the middle classes, after the lifting of the ban on these marriages. Randolph Trumbach has argued that the common law courts' acceptance of marriage between cousins was a victory for aristocratic patrilineal principles over principles of kindred equality and co-operation. Marriages between first cousins benefitted aristocratic families who sought to maximise their land holdings.

The Legislative Council, consistently opposed to marriage with a deceased wife's sister throughout the 1870s, finally acceded to reform in 1880. Low attendance at both the second and third readings assisted the passage of the DWSM Act. Of the Council's forty seven members, only twenty-eight voted on the second reading.¹¹¹ The low attendance concerned opponents of reform who delayed the third reading in the hope that more of their colleagues would attend that meeting.¹¹² The tactic backfired: only twenty-three Councillors attended the successful third reading of the Bill. A general desire to bring New Zealand's law into line with its closest neighbours, together with growing feelings that retaining the ban caused more hardship than it prevented, encouraged the majority of Councillors present to accede to the repeal of the prohibition.

III

Opponents of deceased wife's sister marriage rightly feared that removal of this prohibition would lead to future relaxations of the law. In 1880 William Peter introduced a Bill to legalise marriage with a deceased husband's brother (hereafter DHBM) but subsequently arranged for its discharge.¹¹³ Peter had opposed the DWSM Bills and it is likely that this was a tactical move designed to frighten wavering Councillors away from DWSM reform. The first serious attempt to introduce legislation to legalise marriages between widows and their brothers-in-law came a full decade later when divorce reformer Oliver Samuel introduced a DHBM Bill

Marriage between affines served the interests of the middle classes who sought to maintain alliances by remarriage to the same family: Trumbach, pp.18, 20-21, 32.

¹¹¹ Sixteen Councillors voted in favour of the second reading and twelve voted against the Bill: *NZPD*, 35, 1880, p.398. In the third reading, fourteen approved the Bill and nine opposed the measure: *NZPD*, 36, 1880, p.226.

¹¹² *NZPD*, 35, 1880, pp.440-42.

¹¹³ *Ibid.*, p.470; *NZPD*, 36, 1880, p.80. William Spence Peter (1818-1891) served in the Legislative Council from 1868 to 1891.

into the House in 1890.¹¹⁴ Samuel's Bill did not receive a second reading but its successor, the DHBM Bill of 1893, passed its second reading unopposed.¹¹⁵ Daniel Pollen introduced the 1893 Bill into the Council where a narrow majority of Councillors voted against its second reading.¹¹⁶ A further three years passed before the Bill again appeared before Parliament. In 1896, Frank Lawry successfully carried the Bill through the House of Representatives.¹¹⁷ Once again, however, the Legislative Council rejected the Bill.¹¹⁸ The process was repeated when Lawry re-introduced his Bill in 1898.¹¹⁹ It was not until 1900, a full two decades after the

¹¹⁴ *NZPD*, 67, 1890, p.155. Oliver Samuel (1849-1912), a lawyer and the member for New Plymouth, was the son of a clergyman: Scholefield, p.273. Samuel introduced divorce reform Bills into Parliament in 1887, 1888 and 1889. See Chapter II, p.47.

¹¹⁵ *NZPD*, 80, 1893, p.436. Jackson Palmer (1867-1919), the member for Waitemata, introduced the Bill.

¹¹⁶ *NZPD*, 81, 1893, pp.117-19. Eighteen Councillors approved the Bill but a further twenty voted against the measure. Daniel Pollen (1813-1896), a Irishman and a Tory, sat in the Legislative Council from 1861 to 1870 and from 1873 to 1896. The son of a builder, Pollen became a doctor, journalist and coroner who was described as a 'cultured, genial, and large-minded man'. Although increasingly conservative in his later years in the Council, Pollen supported women's franchise and the temperance movement: *ENZ*, Vol.II, p.815. Pollen had opposed marriage with a deceased wife's sister but argued in 1893 that what was 'sauce for the goose was also sauce for the gander': having passed the DWSM Act thirteen years before, Parliament ought to pass its corollary.

¹¹⁷ *NZPD*, 92, 1896, pp.584-85 (second reading: ayes 40, noes 10); *NZPD*, 93, 1896, p.248 (third reading: ayes 37, noes 12). Frank Lawry (1844-1921), son of a Methodist minister, was born in England and emigrated to New Zealand in 1863. Lawry, a farmer and agricultural commission agent, was also a member of the Masonic grand lodge. Lawry served as member for Franklin North 1887-1890 and for Parnell 1890-1911. A Conservative in 1890, he served as Whip for the Liberals in 1891 and 1894: J.O. Wilson, *New Zealand Parliamentary Record, 1840-1984* (Wellington: Government Printer, 1985), pp.212, 279. A prohibitionist, Lawry also supported equal divorce rights for women.

¹¹⁸ *NZPD*, 94, 1896, p.307. Henry Feldwick moved the Bill's second reading. A majority of seven defeated the Bill (eighteen noes to eleven ayes).

¹¹⁹ *NZPD*, 101, 1898, pp.487-88 (House third reading: thirty-five in favour, thirteen opposed), pp.554-56 (Council second reading negatived: eighteen for, eighteen against with the Speaker's casting vote used to defeat the second reading). Henry Feldwick once again took responsibility for the Bill in the Council.

legalisation of marriages between widowers and their sisters-in-law, that a majority of Councillors finally accepted the validity of marriage with a deceased husband's brother.¹²⁰

The DHBM reform campaign proved a distinctly low-key affair compared to the previous campaign. The proposal generated very little debate in either of the two parliamentary chambers. The few arguments put forward on both sides of the issue largely reproduced those arguments heard in the DWSM campaign. Reformers emphasised the lack of consanguinity in the relationship and the absence of any physiological grounds on which to ban the union.¹²¹ As their opponents had feared, they argued that the abolition of the ban on marriage with a deceased wife's sister logically required the abolition of the ban on the parallel relationship.¹²² Reform, they declared, would deliver innocent children and 'broken-hearted mothers' from unnecessary and undeserved suffering.¹²³ Opposition to reform centred on old fears that whittling away at the prohibited degrees would result in pressure to legalise ever-more objectionable unions. G.S. Whitmore, one of the fiercest opponents of reform, argued that if his colleagues were prepared to pass this Bill, then they ought to abolish all prohibitions against the marriages of affinal relatives, including stepdaughters.¹²⁴ Some opponents of reform denied that marriage with a deceased husband's brother could be considered in any way equivalent to

¹²⁰ *NZPD*, 113, 1900, pp.169-170 (House third reading without division), pp.619-621 (Council second reading: seventeen for, thirteen against); *NZPD*, 114, 1900, pp.9-10 (Council third reading: fifteen for, seven against). Lawry and Feldwick once again championed the Bill in their respective chambers.

¹²¹ *NZPD*, 80, 1893, p.436 (Palmer); *NZPD*, 92, 1896, p.583 (Lawry).

¹²² *NZPD*, 81, 1893, p.117 (Pollen); *NZPD*, 92, 1896, p.584 (Lawry); *NZPD*, 101, 1898, pp.488, 554-55 (Graham, Feldwick); *NZPD*, 113, 1900, p.619 (Feldwick).

¹²³ *NZPD*, 80, 1893, p.436.

¹²⁴ *NZPD*, 81, 1893, pp.118. Major-General Sir G.S. Whitmore (1830-1903), a landowner, came from a military family. He was a veteran of the New Zealand, Crimean and South African wars: Scholefield, Vol.II, pp.501-04. Whitmore also opposed equalisation of the divorce law during the mid-1890s.

marriage with a deceased wife's sister. The two relationships were 'totally different', argued Richard Meredith, the Liberal member for Ashley who thought the union of a man with his brother's widow 'most offensive and revolting to our finer sense'.¹²⁵

Reformers attributed such opinions to traditional religious prejudices which ought now to be cast aside.¹²⁶ Scriptural objections to marriage with a deceased husband's brother had always been stronger than those used against deceased wife's sister unions. While marriage with a deceased wife's sister had not been explicitly mentioned in *Leviticus* its corollary had been included in the list of prohibited sexual relationships.¹²⁷ However, scriptural objections barely featured in the debates of the 1890s. Anti-reform politicians instead focused upon 'social' objections. They argued that no-one wanted the reform, that the proposed legislation pandered to the 'lowest instincts of humanity' and that it attacked 'the purity of family life'.¹²⁸ As had been the case with the DWSM Bills, opponents of reform feared that such a change could unleash dangerous sexual tensions and jealousies within the extended family. However, their fears failed to convince a majority of their colleagues that family life would be seriously affected by such a change. By 1900, a full twenty years after the passage of the Deceased Wife's Sister Marriage Act, such arguments had lost much of their vigour.

That it took twenty years to enact the corollary to the 1880 Deceased Wife's Sister Marriage Act can largely be attributed to more intense scripturally-based prejudice against marriage with a deceased husband's brother. However, a lower level of demand from the general public may also have delayed the introduction of the DHBM Act. DWSM campaigners

¹²⁵ *NZPD*, 111, 1900, p.300.

¹²⁶ *NZPD*, 113, 1900, p.621 (Feldwick).

¹²⁷ Behrman, p.489.

¹²⁸ *NZPD*, 101, 1898, pp.488, 555; *NZPD*, 111, 1900, p.300; *NZPD*, 113, 1900, pp.620-21.

had been partly motivated by a few specific cases of marriages contracted between widowers and their sisters-in-law. Reformers were less likely to encounter cases where widows had married, or sought to marry, a brother of their deceased husband. Young men were less likely to live with their married brothers than were young women with their married sisters. They were able to seek and attain a greater level of independence than young women could and were more likely to live in lodgings. Consequently they were less likely to develop strong emotional attachments to their sisters-in-law. It is also likely that young widows sought support from their parents rather than from their brothers-in-law. Reformers who argued during the DWSM debates that they wished to provide for couples who wished to marry, as well as those who had already married, do not appear to have considered deceased husband's brother unions as likely to occur or be desired as deceased wife's sister unions.

IV

The enactment of the 1900 Deceased Husband's Brother Marriage Act failed to satisfy the reforming impulse of that most ardent of affinal-marriage reformers, W.J. Steward. Fulfilling the dire predictions of anti-reform politicians, Steward continued to seek further relaxation of the prohibited degrees of marriage. In 1903, 1904 and 1905 Steward introduced Bills seeking the removal of the prohibitions against marriages between widows and their deceased husbands' nephews and between widowers and their deceased wives' nieces. Parliament enacted the Marriages Validation Act of 1905 in response to his lobbying. However, in order to get the legislation through Parliament, Steward had been forced to limit the provisions of the legislation.¹²⁹ The Act applied only to those couples who, in ignorance of the prohibitions, had already married. Marriages contracted after 1905 would still be illegal.

¹²⁹ *NZPD*, 137, 1906, p.569.

Despite the growing tolerance for affinal marriage demonstrated in the enactment of the DWSM and DHBM Bill, a significant number of Steward's colleagues felt they had gone far enough.

Each year until his death in 1912, Steward introduced a Bill to remedy the deficiency, as he saw it, in his 1905 Act. Despite his perseverance, he failed to convince his fellow politicians to accept further reform. In the year of Steward's death Richard McCallum, the member for Wairau, introduced the final affinal marriage Bill of this period into Parliament. Although McCallum sought only to legalise those marriages contracted between in-law uncles and nieces and in-law aunts and nephews since 1906 his bid also failed.¹³⁰ The impetus for further reform evaporated with Steward's death. Steward, motivated by the story of his childhood friend and by the colonial cases brought to his attention, had largely driven the campaign for relaxation of the prohibited degrees of marriage.¹³¹ Without Steward, and without large numbers of the public actively clamouring for reform, politicians lacked the motivation to continue with the issue. The existing legislation had already moved well in advance of British law. Britain did not legalise marriage with a deceased husband's brother until 1921. It took a further decade before it abolished the ban on marriages with deceased wife's nieces and deceased husband's nephews.¹³²

Resistance to further relaxation of the prohibited degrees of marriage during the 1900s and 1910s remained centred upon the social implications of the marriages: the principal concern

¹³⁰ *NZPD*, 159, 1912, pp.815 (House second reading: twenty-nine for, twenty-nine against. The Speaker used his casting vote in favour of the Bill); *NZPD*, 160, 1912, pp.132-33, p.240 (House third reading: twenty-five for, twenty-seven against, six pairs). Nine years later Robert Wright, the member for Wellington Suburbs, questioned the Minister of Justice on the likelihood of legislation being introduced to permit marriage between a widower and his deceased wife's niece. The Minister replied that the question would not be discussed until the marriage laws as a whole came up for review: *NZPD*, 192, 1921, p.831.

¹³¹ *NZPD*, 12, 1872, p.261.

¹³² Anderson, p.85.

voiced being that Parliament could be sanctioning the marriages of middle-aged widowers with considerably younger women who may have been raised in their households.¹³³ Focusing on the prospect of older men marrying girls who were virtually their step-daughters, opponents argued that legalising the few existing unions would just encourage further inappropriate and illegal unions. Opponents considered the proposed relationship too similar to genuine father-daughter relationships. Uncle-niece unions, they implied, were socially and psychologically, if not physiologically, incestuous. Although some reformers attributed opposition to affinal marriage to opponents' religious scruples, few anti-reform politicians turned to scripture to justify their positions. Social arguments were clearly more powerful in these cases than traditional religious considerations.¹³⁴

Throughout the late nineteenth and early twentieth centuries many politicians clearly considered incest to be defined as much by social or psychological relationships as by blood ties. Prior to 1900 marital law incorporating these three elements in the prohibited degrees of marriage and in divorce law provided the sole civil law definition of incest.¹³⁵ The English state had criminalised many other 'undesirable' sexual behaviours (including sodomy and bestiality) well before the end of the nineteenth century but had not similarly criminalised incest.¹³⁶ Incest remained a moral offence to be dealt with by the old Ecclesiastical courts rather than by the state.¹³⁷ However, growing anxiety during the 1890s over the sexual vulnerability of young

¹³³ For the most in-depth discussion of this possibility see *NZPD*, 159, 1912, pp.803-815.

¹³⁴ *Ibid.*, p.814. The churches themselves contributed little to the debate.

¹³⁵ Divorce law included 'incestuous adultery' as grounds for divorce. See Chapter II, p.32.

¹³⁶ Incest, however, had long been a criminal offence under Scottish law: Jeffrey Weeks, *Sex, Politics and Society: The Regulation of Sexuality since 1800* (London/New York: Longman, 1994), p.31.

¹³⁷ *NZPD*, 113, 1900, p.475. See also Lynette Finch, *The Classing Gaze: Sexuality, Class and Surveillance* (St Leonards: Allen & Unwin, 1993), p.60.

girls led to the criminalisation of incest in 1900.¹³⁸ Somewhat surprisingly given politicians' continued support for some affinal marriage bans, the Act ignored affinal relationships and defined incest solely in terms of the participants' blood relationship. The Criminal Code Amendment Act defined incest as 'carnal connection' between father and daughter, brother and sister (whole or half blood), son and mother, and grandfather and grand-daughter.¹³⁹ The original Bill had included step-father/step-daughter and step-mother/step-son relations in the list.¹⁴⁰ However, resistance from within the Legislative Council led to the exclusion of these relationships from the legislation. From the limited debate on this section of the original Bill it appears that while a majority of Councillors supported using marital law to discourage unions between father-figures and their young female affinal relatives, they proved reluctant to bring the full force of the criminal law down on such couples. Councillor William Bolt acknowledged that 'the existence of such relationships in a family would be most odious to all of us', but argued that the lack of a blood relationship meant that such reactions were founded on 'mere prejudice' which ought not result in the seriousness of criminal prosecution of the couples involved.¹⁴¹

¹³⁸ See Scott Gallagher, 'Publishing Our Own Dishonour: the Criminalisation of Incest in New Zealand' (B.A. (Hons.) Research Essay, University of Otago, 1993), *passim*, on the criminalisation of incest in New Zealand.

¹³⁹ 1900 Criminal Code Act Amendment Act.

¹⁴⁰ *NZPD*, 113, 1900, p.475. See also the 1896 and 1897 Criminal Code Act Amendment Bills: *Bills Thrown Out*.

¹⁴¹ *NZPD*, 113, 1900, p.475. Not all supporters of deceased husband's brother marriage agreed with Bolt. Some supported the inclusion of step-relationships in the criminal definition of incest. See Henry Feldwick's speech, *NZPD*, 113, 1900, p.475. Feldwick had introduced the successful DHBM Bill into the Council in 1900. During debate on the incest Bill of that year he argued that blood-incest was worse than step-relative incest but thought the latter cases 'might very fairly be "deemed" to be incestuous, and ... might cause greater misery notwithstanding that the parties were not related in blood'.

With the new criminal definition of incest behind them, affinal marriage reformers increasingly highlighted the lack of a physiological relationship between affines during debates over deceased wife's niece and deceased husband's nephew marriages. Reformers had long argued that the marriage of affines ought not to be prohibited when certain blood relatives - first cousins in particular - were permitted to marry. Colonel Brett argued as early as 1871 that the marriage of blood relatives facilitated inbreeding and led to disease.¹⁴² During the 1900s, in conjunction with debates over insanity as grounds for divorce, the reformers drew upon eugenic theory to argue that rather than prohibit affinal relatives from marrying, Parliament ought to consider preventing degenerates from obtaining marriage licenses.¹⁴³ Leonard Isitt summed up the argument in 1912. 'There is only one ground of unfitness for marriage that this House should recognize,' he declared, 'and that is consanguinity, or any marriage that makes for degeneracy, moral or physical'.¹⁴⁴ Rather than prohibiting affinal marriage, the state should ban marriages between first cousins, consumptives, epileptics, drunkards and those likely to produce physically or mentally defective offspring.¹⁴⁵ However, despite the best efforts of Isitt and Steward to restrict the issue to simple physiological considerations, social and psychological considerations thwarted further legislative reform in this period.

V

As in the case of the divorce debates, practical and ideological considerations together provided the impetus for reform of the prohibited degrees of marriage between the late 1800s and early 1900s. Steward and his fellow reformers placed particular emphasis upon practical

¹⁴² *NZPD*, 10, 1871, p.159.

¹⁴³ See Chapter I, p.76.

¹⁴⁴ *NZPD*, 159, 1912, p.806.

¹⁴⁵ *Ibid.*, p.804 (McCallum), p.806 (Isitt), p.807 (Thomson).

issues. They described the suffering of couples whose marriages fell within the prohibited degrees and they argued that such unions were often a practical response to a pressing problem. They also argued that New Zealand's legislation ought to reflect that of its closest neighbours, the Australian colonies. However, secular and anti-sectarian impulses also underpinned reformers' efforts to amend the legislation. Leading reformers tended to come from Non-conformist backgrounds and they opposed the retention of prohibitions founded upon Anglican religious doctrine. Reformers could not see why the general public should be constrained to follow Anglican and Presbyterian precepts. Rational social criteria, they argued, ought to shape the legislation. International developments also played an important role in changing politicians' attitudes towards the prohibited degrees of marriage. New Zealand reformers followed in the wake of English, Australian, Canadian and American campaigners.

Liberal theory's defence of individual rights added weight to the reform campaign. Reformers argued that the question of the appropriateness of marriage with a deceased wife's sister or deceased husband's brother ought to be left to individual consciences rather than to the state. Their opponents challenged this focus upon the individual and argued that relaxing the prohibitions against the marriages of affines posed a threat to society as a whole. Removal of the prohibitions could let loose dangerous sexual tensions within families and the family was the bedrock of society: its stability had to be defended. The state had a right to maintain the prohibitions when these were in the public interest. Different politicians drew the line at different relationships. While a majority eventually accepted the validity of deceased wife's sister and deceased husband's brother marriages, many continued to argue that marriages between uncles and nieces, or aunts and nephews were not in the public interest.

In contrast to many other areas of New Zealand's sex legislation, feminist and social purity reformers played no obvious role in the affinal marriage debates. This was principally an issue concerning the separation of church and state. Although some politicians argued that removing the bans on marriages between affinal relatives would undermine the family and encourage immorality, the campaign failed to draw the attention of the social purity brigade. The timing of the campaign partly accounts for this. By the time the feminist and social purity movements had emerged as powerful political forces the question of deceased wife's sister marriage had finally been settled. As was the case during the campaign to extend the grounds for divorce, differences of opinion within social purity and feminist organisations probably deterred them from issuing general statements on further attempts to relax the prohibited degrees of marriage.¹⁴⁶

While the campaign to relax the prohibited degrees of marriage owed much to secularist and individualistic social and political trends, it also drew much of its force from the efforts of one man to amend the legislation. William Jukes Steward, motivated by his personal knowledge of an illegal affinal marriage, principally drove the reform campaign between the 1870s and the 1910s. His compassion for the plight of those who suffered under the law, together with his Non-conformist religious background, encouraged him to fight for reform for over three decades until his death in 1912. Steward's death brought an abrupt halt to the reform campaign. However, the campaign had already lost much of its momentum. While religious considerations no longer constituted a major barrier to reform, social considerations pitted a majority of legislators against further change.

¹⁴⁶ The *White Ribbon* reported on the progress of the DHBM Bill during the late 1890s but did not comment on the desirability or otherwise of the proposed legislation.

CHAPTER IV

DEPRAVED MINDS, HORRIBLE HABITS AND VILE PRODUCTIONS

SEX AND CENSORSHIP

Dominant social groups have traditionally sought to use censorship as an instrument of social control and a means of preventing the spread of dangerous ideas, attitudes and values among the masses and the vulnerable young.¹ In New Zealand, the history of censorship of sexual material is as much a history of emerging elites and striving professions as it is about established interests defending their own belief systems. During the late nineteenth century, New Zealand doctors lobbied for stricter censorship of 'indecent' advertisements (those which referred to sexual ailments) as part of their crusade for increased status and authority. The doctors used censorship legislation to position themselves as the elite of the healing profession. In defence of their social purity ethic, middle-class moralists similarly argued in favour of increased state controls over 'obscene' literary works, 'indecent' postcards and other dubious articles. During the 1910s, educationalists eager to promote their professional credentials as the experts on child development campaigned for stricter controls on films shown to children. Pro-natalist politicians interested in stricter censorship of birth-control literature also played an important role in the development of censorship legislation. The rise of these new pressure

¹ M.J.D. Roberts, 'Blasphemy, Obscenity and the Courts: The Contours of Tolerance in Nineteenth Century England', in Paul Hyland & Neil Sammells (eds.), *Writing and Censorship in Britain* (London & New York: Routledge, 1992), pp.145-148.

groups - together with the rise of new threats associated with increased literacy, technological change and the growth of consumer society - encouraged significant reform and extension of New Zealand's censorship law.

New Zealand based its early censorship legislation on British vagrancy laws enacted in the 1820s and 1830s. The vagrancy laws, a response to lobbying by the Society for the Suppression of Vice, made obscene displays subject to summary conviction.² Colonial ordinances of the 1840s and 1850s based upon the British legislation similarly prohibited the distribution, sale or exhibition of 'any profane, indecent or obscene book, paper, print, painting, drawing, or representation'. In 1858 customs legislation based upon the British Customs Act of 1853 banned the importation of 'indecent or obscene' articles.³ The legislators did not define the terms 'indecent' or 'obscene' and left customs officials to exercise their discretion.⁴ In 1866 the New Zealand Vagrant Act replaced the earlier ordinances and introduced penalties for public exposure of any obscene books or pictures. Eighteen years later the 1884 Police Offences Act replaced the Vagrant Act and considerably extended the meaning of a public place.⁵ Until the late 1880s the 1858 Customs Act and the 1884 Police Offences Act proved satisfactory controls on the dissemination of obscene literature and other articles.

² The Society, founded in 1802 by leading evangelicals (including William Wilberforce, the noted anti-slavery campaigner), sought out obscene and blasphemous publications and prosecuted their publishers and sellers: Edward Bristow, *Vice and Vigilance: Purity Movements in Britain Since 1700* (Dublin: Gill & Macmillan, 1977), pp.41-45.

³ A.C. Burns, 'Some Aspects of Censorship: A Survey of Censorship Law and Practice in New Zealand From 1841 to 1963, Mainly Concerning the Control of Indecent Publications' (M.A. Thesis, Victoria University of Wellington, 1968), p.4.

⁴ Paul Christoffel, *Censored: A Short History of Censorship in New Zealand* (Wellington: Department of Internal Affairs, 1989), p.4.

⁵ Burns, pp.2-6.

I

Growing medical concern over the prevalence of indecent advertisements in newspapers, together with the rise of the social purity movement, gave rise to a campaign for stricter censorship between the late 1880s and 1910. In 1887, inspired by a paper on quackery delivered at a recent Intercolonial Medical Congress, the editor of the newly established *New Zealand Medical Journal*, Dr Isaiah de Zouche, launched a strong attack upon indecent advertisements, letters and circulars issued by unqualified medical practitioners.⁶ The advertisements and other material objected to by Dr de Zouche promoted remedies for a wide range of sexual ailments and conditions. 'Quack' doctors had long advertised remedies for real and imagined sexual illnesses in Britain and in the colonies.⁷ The stigma associated with sexual diseases, together with orthodox doctors' inability to provide effective and painless cures for venereal ailments, provided an opening for unorthodox and unqualified healers to target and tend to the needs of the embarrassed, the scared and the desperate. Quacks and others eager to exploit this lucrative field advertised widely, offering prospective clients privacy and relatively anonymous treatment through the supply of mail-order medicines and devices.⁸ De Zouche condemned advertising of sexual remedies on the grounds that not only were such

⁶ *NZMJ*, Vol.I (December 1887), pp.103-106, 122-124. The paper, entitled 'The State, the Practitioner and the Public', was presented to the Adelaide conference by Dr E.C. Stirling. Stirling argued in favour of state legislation against 'quacks' and 'imposters' and promoted a stricter definition of a qualified practitioner.

⁷ Christoffel, p.5. See Roy Porter, *Health for Sale: Quackery in England 1660-1850* (Manchester & New York: Manchester University Press, 1989), Chapter VI, for a detailed discussion of quackery and sex in England from the mid-seventeenth to the mid-nineteenth centuries.

⁸ Roy Porter & Lesley Hall, *The Facts of Life: The Creation of Sexual Knowledge in Britain, 1650-1950* (New Haven & London: Yale University Press, 1995), pp.135-36; F.B. Smith, *The People's Health 1830-1910* (London: Croom Helm, 1979), pp.294-303. See Chapter V, p.196.

advertisements indecent, but the unqualified practitioners who issued them endangered the health of the public with their dubious nostrums, pills and potions.

De Zouche's attack on 'indecent advertisements' formed part of a wider campaign against the 'quack' purveyors of sexual and other remedies. Roy Porter has argued that 'From the early-Victorian period, liberal and progressive members within the medical profession ... used the many-headed hydra of quackery as the rallying call for the reformation and purification of the medical profession'.⁹ Orthodox doctors in Britain and in the colonies sought to define themselves against a common 'other' in order to raise their own status, prestige and incomes. Members of the New Zealand medical profession had lobbied for greater professional control over local medicine from the 1850s. However, it was not until a small group of practitioners formed the New Zealand Medical Association (NZMA) in 1887 that a concentrated campaign for doctors' control over medical licensing and professional discipline emerged.¹⁰ Lobbying against quacks' and irregular practitioners' advertising of sexual remedies formed an important part of orthodox doctors' campaign to restrict the practice of medicine to members of their own camp.

The regular doctors' campaign against their irregular competitors coincided with renewed social purity concern over the corrupting influence of 'immoral' and 'obscene' pictures and literature. British purity campaigners had launched sustained campaigns against the display and dissemination of erotic and obscene material since the late 1700s. Increased availability of such material together with a growing reading public troubled respectable elements of society

⁹ Porter, *Health for Sale*, p.16.

¹⁰ Michael Belgrave, '"Medical Men" and "Lady Doctors": The Making of a New Zealand Profession, 1867-1941' (Ph.D. Thesis, Victoria University of Wellington, 1985), p.38.

who considered sexual licence socially dangerous.¹¹ The resurgence of the social purity movement during the 1880s led to a new and more intense focus upon the dangers of immoral literature. In an address to British anti-vice campaigners in 1882, Emile de Lavelaye, a prominent Belgian economist, drew a bleak picture for his audience. Civilised societies, he argued, were suffering from

an inundation of immorality ... a contagion of satyriasis ... which infects alike our books, our journals, engravings, photographs, etc., and extends from our fine art exhibitions down to our allumette boxes. And this rising tide of pornography ... threatens family life itself, the very foundations of society.¹²

The purity reformers considered quack advertisements for venereal remedies just as offensive as pornographic material. As part of their campaign to eliminate all public references to sexuality, the reformers, together with concerned British doctors, demanded an end to the publication or display of indecent advertisements. In 1889 the British Parliament responded to their lobbying and passed the Indecent Advertisements Act. The Act banned 'the posting up or distributing of advertisements related to complaints or infirmities arising from sexual intercourse'. The Act did not prohibit the advertising of venereal remedies in the newspapers. However, pressure from the purity lobby encouraged the respectable press to cease publishing the offending advertisements.¹³

In New Zealand doctors' and purity reformers' interests similarly merged on the topic of indecent advertising during the 1880s and 1890s. Moreover, some doctors such as Frederic

¹¹ With the rise of the circulating libraries, women began to dominate the market for fiction. Charity schools and the Sunday School movement increased literacy levels among the young poor. Edward Bristow notes that purity reformers associated sexual laxity with the social and political disruption which developed across the Channel during the French Revolution: Bristow, pp.35-50.

¹² *National League Journal*, Working Men's League for Repeal, Nov. 1882, cited in Bristow, p.200.

¹³ Bristow, p.204.

Truby King, the Medical Superintendent of Seacliff Asylum, embraced the wider view of the purity reformers and extended their complaints to cover more than just quack advertisements.

In 1890 the *New Zealand Medical Journal* published an influential article by King entitled 'A Plea for Stringent Legislation in the Matter of Corrupt and Immoral Publications'. King attacked the following categories of 'useless and pernicious' publications:

- (1) *Books* of distinctly corrupt and immoral tendencies (purporting, usually, to be the guides, philosophers, and friends of humanity in general, and youths in particular), *e.g.*, 'The Elements of Social Science.'
- (2) *Pamphlets* of similar tendencies (mostly quack advertisements) *e.g.*, 'Health, Strength, Vigour, Manhood.'
- (3) Corrupt and indecent *advertisements*.
- (4) Corrupt and immoral *literature*, *e.g.*, 'Nana.'
- (5) Corrupt and indecent newspapers, or newspaper articles, and printed or pictorial sheets of any kind calculated to pervert public morals, or to furnish what *The Lancet* aptly calls 'Pictorial Education in Crime' - *e.g.*, *The Police News*, *The Dead Bird*, Indecent reports of rape or divorce cases, etc.¹⁴

Truby King expressed particular concern over the vulnerability of boys and young men to material containing false or misleading information about male sexuality. He devoted much of his article to a discussion of his first three categories, attacking what he considered to be fallacious and immoral ideas spread by 'quacks' and 'vile charlatans' about men's need for sexual release and about the alleged dangers of male masturbation.

King considered George Drysdale's *Elements of Social Science* a particularly pernicious text. The book, first published in 1854 and regularly reissued until 1914, controversially argued that the suppression of natural sexual instincts caused more harm to an individual's health than did sexual excess.

If society would allow the "natural" expression of the sexual appetite, the result, proclaimed Drysdale, would be a diminution of such "perverse" activities as

¹⁴ F. Truby King, M.B., B.Sc. (Edin.), 'A Plea for Stringent Legislation in the Matter of Corrupt and Immoral Publications', *NZMJ*, Vol.IV (October 1890), p.18.

masturbation and prostitution and such medical problems as syphilis, gonorrhoea, and hysteria.¹⁵

Drysdale, a doctor, radical and leader of the Malthusian League promoted 'a Malthusian gospel of "preventive intercourse", early marriage with the use of contraceptives'.¹⁶ His book discussed five methods of contraception: the 'safe period', coitus interruptus, the sheath, the sponge and douching.¹⁷ However, it was not the book's focus upon contraception that drew King's ire. King primarily opposed the book because he believed it encouraged immorality and sexual precocity in the young.¹⁸ King adhered to a social purity and medical ideology which equated sexual health with sexual self-control.¹⁹ Books 'of the "Social Science" class, he argued, spread immoral, dangerous and incorrect beliefs about male and female sexuality.

The quack pamphlets and indecent advertisements referred to in King's second and third categories of corrupt publications reiterated some of the points made in the *Elements of Social Science*. Drysdale, together with many regular doctors, 'quacks' and members of the general public, believed that masturbation was a dangerous and debilitating practice. Sexual overindulgence, whether through intercourse or masturbation, had been 'considered debilitating since at least the time of Hippocrates'. However, concern over the dangerous consequences of male masturbation became particularly marked from the mid-eighteenth century following the publication of Simon-André Tissot's influential text on masturbation, or 'onanism'. Tissot argued that all sexual activity was debilitating but that masturbation was particularly harmful.

¹⁵ Rosanna Ledbetter, *A History of the Malthusian League 1877-1927* (Columbus: Ohio State University Press, 1976), pp.13-14.

¹⁶ Porter & Hall, p.148.

¹⁷ Ledbetter, pp.15-16.

¹⁸ King, 1890, pp.25-26.

¹⁹ F. Truby King, 'A Plea for Stringent Legislation in the Matter of Corrupt and Immoral Publications' contin., *NZMJ*, Vol.IV (January 1891), pp.151-52.

Tissot attributed this debilitation to loss of seminal fluid, arguing that the loss of one ounce was equivalent to the loss of 40 ounces of blood. His book proved highly popular and helped establish the medical belief that masturbation could cause serious physical and mental ailments.²⁰ Nineteenth century medical theory based upon Tissot's work held that

masturbatory practices drained "nerve force" from other parts of the body making them more susceptible to disease. In this view, semen represented the "vital essence" of the male system; it was the life principle in tangible form.²¹

Ailments believed to be associated with masturbation included epilepsy, blindness, headache, impotency, loss of memory, general loss of health and strength, 'nervous debility' and ultimately insanity and death.²² Involuntary seminal losses, also known as 'nocturnal emissions', also caused concern. Involuntary seminal loss was considered the main symptom of 'spermatorrhoea': a term commonly used from the 1860s to cover a range of debilitating symptoms associated with seminal loss.²³ Although female masturbation also caused concern, it was not widely discussed. Many doctors thought it best not to alert women to the existence of the vice.²⁴

²⁰ H. Tristram Engelhardt Jr., 'The Disease of Masturbation: Values and the Concept of Disease', in J.W. Leavitt & R.L. Numbers (eds.), *Sickness and Health in America: Readings in the History of Medicine and Public Health* (Madison, Wisconsin, 1985), p.13. See also Porter, pp.173-179, on the development of masturbation anxiety from the mid-eighteenth century.

²¹ David Walker, 'Continence for a Nation - Seminal Loss and National Vigour', *Labour History*, No.48 (May 1985), p.6. For further discussion of nineteenth-century doctors' attitudes to masturbation see Lesley A. Hall, 'Forbidden by God, Despised by Men: Masturbation, Medical Warnings, Moral Panic, and Manhood in Great Britain, 1850-1950', in John C. Fout (ed.), *Forbidden History: the State, Society and the Regulation of Sexuality in Modern Europe: Essays from the Journal of the History of Sexuality* (Chicago: University of Chicago Press, 1992), *passim*. See also Engelhardt, p.15.

²² Engelhardt, p.14.

²³ Walker, pp.1-2.

²⁴ Porter & Hall, *The Facts of Life*, pp.147-48; Engelhardt, p.14.

Regular doctors and their competitors offered a wide range of treatments and advice to male self-abusers.²⁵ Clergymen and social purity reformers also offered advice, emphasising the virtues of self-discipline and self-denial.²⁶ However, the treatment of spermatorrhoea became a particularly lucrative field for quacks and charlatans who were prepared to treat sufferers at a distance, sending advice, medication and anti-masturbation devices through the post. The expansion of the market for medicine during the late nineteenth century together with rising literacy levels and mass production of goods encouraged widespread advertising of remedies for sexual ailments.²⁷ Advertisers intensified and exploited popular anxieties over masturbation. Tracts and advertisements luridly described a wide range of ailments attributed to masturbation or spermatorrhoea. Advertisers would then offer the sufferer 'hope of restoration through the use of "vegetable compounds," or such devices as "Pulvermacher's World Famed Galvanic Belt" and the "Electric Life Invigorator"'.²⁸

Truby King objected to advertisements which targeted male masturbation anxieties on two main grounds. Firstly, he argued, they created unnecessary sexual anxiety, and secondly, they exposed sufferers to blackmail by unscrupulous quacks and opportunists. Michael Belgrave and Lesley Hall have both argued that by the 1890s current professional opinion no

²⁵ Hall, 'Forbidden by God', p.296. See Engelhardt, pp.16-17, regarding treatments prescribed by doctors.

²⁶ In an address to 'approximately 1000 young men and youths' in 1888, the Reverend Joseph Berry warned against the evils of self-abuse and urged his audience to keep strict watch over impure thoughts, to bathe in cold water every day, to eat less meat and more bread and vegetables, to avoid smoking and to get plenty of exercise: *Private Lecture to Young Men Upon an Avoided but Important Subject* (Wellington: 1888), *passim* (ATL).

²⁷ Angus McLaren, *A History of Contraception: From Antiquity to the Present Day* (Oxford: Basil Blackwell, 1990), pp.185-186.

²⁸ Hall, 'Forbidden by God', p.297.

longer considered seminal loss a major health problem.²⁹ Masturbation was still condemned but was not considered as harmful as had been supposed in the past.³⁰ King, a specialist in mental health, endorsed a medical view which suggested that the guilt and shame aroused by quack advertisements could prove more damaging to anxious young men than the act of masturbation itself. He quoted his former teacher, the eminent Edinburgh medical authority Sir T.S. Clouston, on this point:

those shameful quack advertisements ... do and can do no good to anyone; they aggravate the miseries of those who are suffering from the minor effects of this vice by keeping them constantly before their minds; they suggest evil thoughts to those who might be free of them, and they fatten the vilest of mankind. I verily believe, and I speak from some experience, that there are about as many people made insane by these advertisements, and the pamphlets sent out by the advertisers, as by the habit of masturbation itself.³¹

King argued that some quacks' 'principal means of livelihood consists in blackmailing young men, after persuading them they are suffering from disease of the sexual organs'.³² Several years later, politician J.T.M. Hornsby provided his colleagues with a vivid example of how blackmailers operated:

A young lad had got into the clutches of a scoundrel who advertises in a large number of papers in the colony ... This young man had committed a crime against his body, and wrote to the harpy; this villain got in touch with the lad, sent him medicine - which, of course, did him no good - and when the young fellow ceased to correspond with the vampire - when he did not reply further to his communications - he received a letter threatening to expose him to his father and friends if he did not send so-much money by return of mail ... The

²⁹ Belgrave, p.306. However, Belgrave notes that this view 'had not filtered down to each-and-every doctor'. See also Hall, 'Forbidden by God', p.304.

³⁰ Hall, 'Forbidden by God', pp.304-305.

³¹ *Mental Diseases*, by T.S. Clouston, M.D. (Edin.), F.R.C.P.E. (London: J & A Churchill, 1883), cited by King, 1890, p.24. Truby King had studied mental illness under Clouston. In 1889 King was appointed medical superintendent of Seacliff Lunatic Asylum. He also lectured in mental diseases at the University of Otago: *DNZB*, Vol.II, p.257.

³² King, 1890, p.24.

blackmailer knows no pity; he pursues his victim even though he drives him to a lunatic asylum or the grave.³³

Quacks not only spread false information about male sexual physiology, they allegedly exploited fears they helped create for their own pecuniary advantage at great cost to their victims' mental health.

In addition to condemning misleading medical texts and quack advertisements, Truby King criticised corrupt and immoral literature 'of the "Nana" type'.³⁴ Emile Zola's novel *Nana*, first published in 1880 and reissued in a slightly expurgated form in 1886, told the story of a charismatic, beautiful prostitute.³⁵ The novel vividly described Nana's corrupt and debauched life as a fashionable courtesan in Paris during the Second Empire. It contained obscene language and included references to lesbian and sado-masochistic activity as well as to more common-place scenes of heterosexual debauchery.³⁶ In 1888, in response to agitation by the National Vigilance Association of London, an English court convicted publisher Henry Vizetelly on a charge of publishing obscene works, notably Zola's *Nana*, *Pot-boille* and *La Terre*.³⁷ Vizetelly's conviction was highly significant for the development of British censorship law. It was the first time that the law of obscene libel had been used against serious literature.³⁸

The case did not go unnoticed in New Zealand and sparked one of the first of the colony's prosecutions for indecent publications. In 1890, the same year that Truby King's article

³³ NZPD, 137, 1906, p.407. John Thomas Marryat Hornsby (1857-1921), a printer and newspaper editor, was the MHR for Wairarapa: *DNZB*, Vol.III, p.231.

³⁴ King, 1890, p.17.

³⁵ Bristow, p.207.

³⁶ Emile Zola, *Nana*, translated by Douglas Parmée (Oxford/New York: Oxford University Press, 1992), *passim*.

³⁷ Alan Schom, *Emile Zola: A Bourgeois Rebel* (London: Queen Anne Press, 1987), pp.114-115; Bristow, p.207; Donald Thomas, *A Long Time Burning: The History of Literary Censorship in England* (London: Routledge & Kegan Paul, 1969), pp.267-71.

³⁸ Bristow, p.207.

appeared in the *New Zealand Medical Journal*, police in Christchurch actively sought out copies of Zola's works and brought charges against five local booksellers for selling obscene literature, including the now notorious *Nana*.³⁹

The Otago, Canterbury, Wellington and Auckland branches of the NZMA fully endorsed King's paper with its widespread criticisms of a range of corrupt and immoral works. Each passed resolutions calling for further action against immoral publications. Taking advantage of their proximity to Parliament the Wellington branch formed a committee to lobby Parliament directly on the issue and to watch over any Government action.⁴⁰ In response to the concerns expressed by the doctors and inspired by the enactment of the 1889 English Indecent Advertisements Act, Legislative Councillor William Downie Stewart introduced a similar Bill into the Council in 1891.⁴¹ Although the Bill failed to receive a third reading in the House of Representatives, Parliament passed the measure the following year.

The 1892 Offensive Publications Act, the first New Zealand Act to deal exclusively with indecent, obscene and immoral publications, encompassed all such publications, and not just indecent advertisements. Section 3 of the Act prohibited the public display, sale or distribution of 'any picture or printed or written matter which is of an indecent, immoral or obscene nature' or which was deemed to have 'an indecent, immoral, or obscene effect'. The Act also extended the definition of an indecent advertisement. Section 5 prohibited the publication of

Any advertisement or other publication relating to any venereal or contagious disease affecting the generative organs or functions, or having reference to any

³⁹ Burns, p.10. In 1890 the Christchurch branch of the WCTU expressed concern over the evils resulting from the sale and exposure of impure literature. Their lobbying may have encouraged local authorities to take formal steps to suppress indecent publications in Christchurch: WCTU Minutes, National Convention, Dunedin, 1890, p.18 (MS Papers 79-057-09/13, ATL).

⁴⁰ *NZMJ*, Vol.IV (1890-91), pp.64, 121-123, 189, 363.

⁴¹ *NZPD*, 70, 1891, p.407.

nervous debility, or other complaint or infirmity arising from or relating to sexual intercourse, or which the Court shall be satisfied is intended to be of that nature.⁴²

Penalties for repeat offenders included fines of up to fifty pounds and imprisonment with hard labour for up to twelve months.

The politicians spent little time debating the measure. However, those who did comment upon its provisions focused upon Section 5. Commentators in the Legislative Council expressed particular concern over the vulnerability of the young to quack advertisements which traded upon 'their morbid sensitiveness in relation to the condition of their sexual organs'.⁴³ Truby King had also emphasised the particular vulnerability of the young to the corrupting influence of indecent publications. 'The effect of such publications upon adults', he wrote, 'cannot be elevating'

but their influence is exercised mainly, and most potently, upon youth. In fact, the *raison d'être* of the majority of indecent publications is to attack, for direct or indirect pecuniary advantage, the weak points of adolescence - in other words, to take advantage of a period of *physiological* instability.⁴⁴

The concern expressed over youthful vulnerability to quack advertising had its roots in the same attitudes which saw the young identified as those most likely to succumb to self-abuse. Increased concern over the dangers of masturbation during the eighteenth and nineteenth centuries was related to changing attitudes towards childhood. From the 1600s children were increasingly regarded as weak and susceptible, requiring protection 'both from the sexual world of adults and from their own susceptible natures'.⁴⁵ During the nineteenth century governments became increasingly interested in the health and welfare of children. By emphasising the danger

⁴² Offensive Publications Act, *NZ Statutes*, 1892.

⁴³ *NZPD*, 78, 1892, p.831 (Dr M.S. Grace).

⁴⁴ King, 1890, p.18.

⁴⁵ Walker, pp.11-12. See also Hall, 'Forbidden by God', pp.299-304.

quacks posed to the vulnerable young, the doctors and purity reformers greatly strengthened their case for government action against indecent advertising. The focus upon the young, together with the promotion of social purity ideals and an emphasis upon the dangers unscrupulous quacks posed to public health, produced a persuasive case for the introduction of new legislation.⁴⁶

Lobbying by the NZMA, spearheaded by Truby King, principally drove the early 1890s campaign to ban the publication of indecent and obscene material. A genuine belief in the efficacy of their own treatments and in the harm done by quacks and other irregular practitioners no doubt helped inspire the regular doctors' campaigns against their competitors. However, self-interest also played a significant role in their efforts to combat advertising by quacks and other irregular practitioners. Although the market for medicine in Britain and in the colonies expanded considerably during the late nineteenth century, doctors faced increased competition from other 'peddlers of health services'.⁴⁷ Until the 1870s the medical market in New Zealand had been divided among a limited number of groups of health workers. The following decades saw a proliferation of different health occupations including dentists, opticians, masseurs, herbalists, hydrotherapists, medical electricians, chiropractors and osteopaths.⁴⁸ The regular doctors sought to distinguish themselves from their competitors and to maximise their incomes and social status by placing themselves at the head of the profession. Part of this process involved attempts to establish a professional monopoly in the area of psychological and sexual

⁴⁶ See Chapter VI, pp.239-40.

⁴⁷ Belgrave, pp.34, 62, 294; Anne Digby, *Making a Medical Living: Doctors and Patients in the English Market for Medicine, 1720-1911* (Cambridge: Cambridge University Press, 1994), pp.140, 164-169.

⁴⁸ Belgrave, p.294.

illness.⁴⁹ Social purity lobbying against indecent publications also contributed to the enactment of the Offensive Publications Act. However, the regular doctors' desire to confine the treatment of sexual ailments to their own hands lay at the heart of the campaign to ban 'indecent' advertisements from the nation's newspapers.⁵⁰

Continued social purity and medical concern over indecent advertisements, together with court-case exposure of gaps in the legislation, led to a series of further changes to censorship legislation during the 1890s and early 1900s. In 1893 Parliament passed the Post Office Acts Amendment Act. The new legislation empowered postmasters to detain and destroy any posted packages believed to contain any publication of an indecent, immoral or obscene nature or which was likely to have an indecent, immoral, prurient or obscene effect.⁵¹ A second amendment passed in 1900 made it an offence to send indecent publications and articles through the post.⁵² The changes to the postal law provided the state with additional means of combating the activities of New Zealand and Australian quacks engaged in mail-order medicine.⁵³ During the latter decades of the nineteenth century Sydney had developed a thriving sub-medical industry around masturbation and other sexual anxieties that 'may have been worth around £100,000 in peak years'.⁵⁴ New Zealand consumers contributed to the prosperity of the New South Wales practitioners. The new postal legislation enabled the state to

⁴⁹ *Ibid.*, p.306.

⁵⁰ Medical involvement in the campaign did not go uncriticised. Legislative Councillor G.S. Whitmore reminded his colleagues that the medical profession were not impartial in the matter. They 'naturally think', he noted, that 'their profession should deal with all cases which might arise in respect to diseases of this sort': *NZPD*, 71, 1891, p.408.

⁵¹ Post Office Acts Amendment Act, *New Zealand Statutes*, 1893, s.3.

⁵² Post Office Act, *New Zealand Statutes*, 1900, s. 82 (5c).

⁵³ Truby King had drawn attention to the activities of Australian quacks who advertised in New Zealand and Australian papers: King, 1890, pp.24-25.

⁵⁴ Walker, p.2.

interfere in cases where the advertisements did not actually breach the law but where it was suspected that the advertisers were in fact dispensing dubious sexual advice and nostrums via the post. In 1906, a third Post Office Act Amendment Act empowered the Postmaster-General to cease delivering packages to any person whom he had reasonable grounds to suspect was engaged in an obscene or immoral business or who advertised, in direct or indirect terms, the treatment of diseases of the sexual organs.⁵⁵ Despite the breaches of personal privacy and individual liberty inherent in the three initiatives none of the amendments provoked debate in either the House of Representatives or the Legislative Council. The politicians, in accord with the doctors on this matter, proved united on the need to protect the public from mail-order quacks, charlatans and blackmailers.

However, the doctors' attempts to build a united profession by attacking other medical practitioners did not receive the wholehearted approval of the parliamentarians. The 1906 Post Office Act Amendment Act was introduced as a partial answer to broader anti-quackery concerns. Earlier that year, J.T.M. Hornsby, the Liberal member for Wairarapa, had introduced a wide-ranging anti-quackery Bill into Parliament: the Quackery and Other Frauds Prevention Bill. The Bill sought to introduce tighter controls on the sale and advertising of patent medicines.⁵⁶ Although Hornsby's colleagues expressed strong support for the principles which lay behind his Bill some members, including Premier and the Minister of Public Health, took issue with its detail.⁵⁷ The possibility that the Bill might encourage the development of a

⁵⁵ Post Office Act Amendment Act, *NZ Statutes*, 1906.

⁵⁶ *NZPD*, 137, 1906, p.406. Under the proposed legislation, before non-registered practitioners could advertise or sell any medicaments 'other than those prescribed and supplied by a duly qualified medical practitioner or a registered chemist', they would have to obtain a certificate from the Chief Health Officer: Quackery and Other Frauds Prevention Bill, *Bills Thrown Out*, 1906, s. 3 & 5.

⁵⁷ *NZPD*, 137, 1906, pp.408-09, 415-16.

medical corporation or monopoly caused concern. Some members feared that the Bill would prevent non-registered but nonetheless effective and reputable medical practitioners from advertising. Ewen Alison, the member for Waitemata, went so far to suggest the title of the Bill ought to be 'The Medical Practitioners' and Chemists' Dispensing Monopoly Bill'.⁵⁸ Concern that the Bill would unfairly penalise reputable 'irregular' practitioners resulted in the shelving of the Bill and the introduction of the more restricted 1906 Post Office Act Amendment Act.

The following year Hornsby submitted a revised anti-quackery Bill to a select committee for comment. Evidence given to the Quackery Prevention Committee reiterated the concerns expressed by politicians during debate over Hornsby's 1906 anti-quackery Bill. Several of those who provided evidence expressed their concern that by preventing unregistered practitioners from dispensing their own medicines the legislation would provide doctors and chemists with an unwarranted medical monopoly.⁵⁹ William Mclean, a former member of the House of Representatives, expressed his reservations on this point. Mclean argued that there was 'another class of gentlemen, ... and sometimes ladies' who proved helpful to patients to whom regular doctors had proved unable to give relief. Mclean had himself in mind. 'I may say frankly', he declared, 'that I have practised for nearly twenty-five years as a mental and magnetic healer, and during that time I have effected a number of cures where medical men have failed.'⁶⁰

Mclean's fears that the proposed legislation would create 'undue monopoly' for the medical profession had a sound foundation. Doctors' self-interest, as well as genuine concern for the health and welfare of the wider community, played a major role in the anti-quackery

⁵⁸ *Ibid.*, p.422. See also pp.406, 415, 417, 422. Josiah Hanan, the member for Invercargill, expressed particular concern over the impact the Bill might have on metaphysicians, not all of whom were registered practitioners, p.412.

⁵⁹ *Ibid.*, pp.410 (Mr Sidey), 412 (Mr Hanan), 422 (Mr Alison).

⁶⁰ Report of the Quackery Prevention Bill Committee, *AJHR*, 1907, Vol.V, I-14, p.1.

campaign. Between 1874 and 1911 the total number of health providers in New Zealand grew from 1005 to 7707. However, population increase failed to keep pace with the proliferation of medical practitioners. During this period the number of citizens per health professional declined from 343 to 128.⁶¹ Increased numbers of health providers were forced to compete for the attention and bankbooks of fewer patients. Regular doctors categorised their unregistered, untrained and unorthodox competitors as cranks or dangerous quacks whose dubious nostrums were poisoning the minds and bodies of the misguided public. Anti-quackery legislation was one means by which doctors could enlist state aid to help control a highly competitive medical market.

Not all politicians accepted the doctors' dismissal of their competitors as either cranks or quacks. It has been argued that despite legislative action taken against 'quack' advertisers in the 1890s and late 1900s, the Liberal era proved a major setback for the professional aspirations of medical reformers. While many of the groups associated with liberalism, including the new middle classes, valued the type of medicine promoted by doctors, they were unconvinced of the benefits of allowing doctors to create a more powerful and monopolistic profession.⁶² During debate over anti-quackery measures, several parliamentarians reminded their colleagues that previous attempts to place restrictions on the sale of patent medicines had proved unpopular with the public.⁶³ Many members of the public placed great trust in the abilities of irregular

⁶¹ Belgrave, p.295.

⁶² *Ibid.*, p.62: Louise May, 'Medical Malversations': The Quacks, the Quackery Prevention Act 1908, and the Orthodox Medical Profession's Push for Power' (B.A. (Hons.) Research Essay, University of Otago, 1994), p.79.

⁶³ *NZPD*, 137, 1906, p.410.

practitioners.⁶⁴ The six public petitions presented on the subject of quackery between 1906 and 1908 all supported local herbalists and requested that they be exempted from the proposed legislation.⁶⁵ The problem for the politicians lay in how to protect the public from true quacks without unfairly penalising irregular practitioners who could offer genuine help to the sick.

In 1908 the politicians passed the Quackery Prevention Act in answer to some of the concerns raised by doctors and other commentators. The Act introduced tighter controls on the sale and advertising of medicines and health appliances and placed the Chief Medical Officer in the role of prosecutor. However, it did not criminalise the activities of irregular or unorthodox healers. Despite criticism made of their training and techniques by orthodox doctors, the Act did not attempt to prevent alternative healers from practising their trade.⁶⁶ Many members of the public were not yet convinced of the worth of 'regular' medical knowledge. They continued to place much faith in folk medicine and in other 'alternative' therapies. Politicians similarly had yet to be convinced of the desirability of total domination of the medical market by the regular doctors.

II

The debates over the anti-quackery Bills of the early 1900s reveal a particular concern over the sale and use of 'preventives': contraceptives and abortifacients. Deep-seated anxieties concerning the strength and welfare of the nation provided the context for intense political concern over the birth-rate during the late 1890s and early 1900s. Domestic pressures stemming from the recent economic depression, growing urbanisation and the rise of the feminist,

⁶⁴ See J.M. Gray, 'Potions, Pills and Poisons: Quackery in New Zealand circa. 1900-1915' (B.A. (Hons.) Research Essay, University of Otago, 1980), pp.1-7, regarding public support for alternative practitioners.

⁶⁵ Public Petitions, *AJHR*, Vol.III, 1906, petition numbers 181, 411, 412, 413, 439, 440.

⁶⁶ May, p.3.

temperance and social purity movements helped create an atmosphere of uncertainty and unease. International military and economic rivalries also stimulated national insecurities. Competition and conflicts around the world, including the South African War (1899-1902) and the Russo-Japanese War (1904-05) acted as constant reminders that national security depended upon healthy and numerically strong populations. Nationalist, imperialist and racist ideologies permeated the 1890s and 1900s and provided fertile ground for anxieties over national strength. Declining birthrates throughout the western world during these years also encouraged fears of national decline and degeneration. These insecurities provided the background for a disjointed, but very real, campaign against the advertising, sale and use of birth control measures between 1900 and 1908.

By the late 1880s it had become apparent that New Zealand's fertility rate was declining. Between 1876 and 1901 the total fertility rate halved from an estimated 7.0 live births per woman to 3.5 live births.⁶⁷ New Zealand was not alone in undergoing a dramatic demographic shift; fertility decline was an international trend. From the early decades of the nineteenth century France and the United States exhibited sustained declines in fertility. During the 1870s most of the European nations followed suit.⁶⁸ Concerned commentators in Britain, Australia and New Zealand labelled declining birth rates 'race suicide'.⁶⁹ They argued that the Anglo-

⁶⁷ Ian Pool & Fred Tiong, 'The Revolution in Pakeha Family Formation: 1876-1901', in 1990, *One Thousand Years of New Zealand Population: Heeding the Past and Planning for the Future*, Proceedings of the 1989 New Zealand Demographic Society Conference 23-24 May 1989, University of Waikato, p.44. See also C. James O'Neill, 'Fertility: Past, Present, and Future', in R.J.W. Neville and C.J. O'Neill (eds.) *The Population of New Zealand: Interdisciplinary Perspectives* (Auckland: Longman Paul Ltd, 1979), pp.125-131.

⁶⁸ McLaren, pp.178-79.

⁶⁹ The decline of the Australian birth rate during the 1890s led to the establishment of the 1903 NSW Royal Commission to investigate the causes of the decline. New Zealand commentators drew on evidence given to the Commission to explain New Zealand's own declining birthrate. For a detailed account of events in Australia, see Neville Hicks, *This Sin*

Saxon race was in danger of being outbred by inferior but more prolific races.⁷⁰ The rise of the Asian powers caused particular concern in New Zealand. Vilification of Asians in the press and in Parliament was common. Legislation restricted Asian immigration into the country and commentators regularly invoked the spectre of the 'Yellow Peril' - the potential invasion of New Zealand by the fertile Asian hordes - to frighten citizens out of any sense of complacency about New Zealand's place in the world.⁷¹

Demographers, statisticians, and historians have suggested numerous reasons for the widespread fertility decline in the Western world between 1870 and 1930. Contraception, abortion, sexual continence, postponed marriages, ideological shifts, and varied economic and social factors have all been posited as fundamental ingredients in the late nineteenth-century demographic transition. In New Zealand the decline has been principally attributed to delayed marriage, an increase in the numbers of women remaining single, and an increase in the use of birth control within marriage.⁷² However, although a number of new birth control techniques were developed and advertised in the late nineteenth century, Ian Pool and Fred Tiong have argued that abortion and traditional methods of limiting births, such as *coitus interruptus*, were more important means of controlling fertility in New Zealand as the new methods were not widely available in the colony at this time.⁷³ International studies have similarly argued that

and Scandal': Australia's Population Debate 1891-1911 (Canberra: Australian National University Press, 1978), *passim*.

⁷⁰ Carol Bacchi, 'Evolution, Eugenics and Women: the Impact of Scientific Theories on Attitudes towards Women, 1870-1920', in Elizabeth Windschuttle (ed.), *Women, Class and History: Feminist Perspectives on Australia 1788-1978* (Sydney: Fontana/Collins, 1980), p.136.

⁷¹ P.J. Gibbons, 'The Climate of Opinion', in G.W. Rice (ed.), *The Oxford History of New Zealand* (Auckland: Oxford University Press, 1992), p.310.

⁷² Pool & Tiong, pp.44-45.

⁷³ Pool & Tiong note that 'In Europe and North America there was a growing interest in birth control and new methods, such as condoms, were being introduced to mass markets. To effect a radical fertility decline such as that achieved among Pakehas, however, other means

'The sudden decline in fertility was no doubt aided by, but clearly not dependent on, any technological breakthrough in contraception'.⁷⁴

Shifting values played an essential role in the fertility decline. Several significant social changes have been identified as leading to the value shifts which made birth control a more desirable option.⁷⁵ Firstly, during the late nineteenth century Pakeha New Zealand moved from a migrant, pioneer society to a more established settler society which was less in need of large numbers of children as part of the family workforce. Secondly, economic depression in the 1880s and early 1890s may have forced couples to limit their family size. Thirdly, children were increasingly becoming dependents in the family rather than earners in the workforce; a change reflected in the introduction of universal compulsory education in 1877. Children thus became more expensive to maintain. And fourthly, the growth of urbanisation during the late nineteenth century encouraged families to have fewer children. Children are more dependent in an urban, rather than rural, setting and urban centres are the first points of entry for new ideas about birth control.⁷⁶

Alarmed by New Zealand's declining fertility, the pro-natalist Premier Richard Seddon, the father of six daughters and three sons, introduced a Sale of Preventives Prohibition Bill into Parliament in 1901. Although the advertising of preventives (contraceptives and abortifacients) was considered 'indecent' under the Offensive Publications Act, their sale was not illegal. Seddon's Bill proposed that it be made an offence for any person to sell, distribute or offer for

must have been employed': pp.44-45. Other new or more newly available contraceptives included pessaries, diaphragms, douches and spermicides. Older methods included abortion, the use of sponges and coitus interruptus: McLaren, pp.183-186.

⁷⁴ McLaren, p.186.

⁷⁵ Pool & Tiong, p.45.

⁷⁶ *Ibid.*

sale or distribution, 'any contrivance or thing for the purpose or with the intention of hindering or preventing conception.' In the case of a woman whose life might be endangered by pregnancy, registered medical practitioners would be permitted to authorise the use of contraceptives obtained from registered chemists. The Bill also proposed that the state be empowered to prohibit the importation of preventives.⁷⁷ However, Seddon failed to gain a second reading for his Bill. Discussion of the Bill in later years indicates that the politicians felt it lacked significant public support.⁷⁸

Although the Bill failed, political debates over anti-quackery legislation between 1906 and 1908 reveal a significant level of political disapproval of the use of preventives. J.T.M. Hornsby argued that his 1906 Quackery and Other Frauds Prevention Bill was intended to prevent the sale and advertising of fraudulent and 'immoral' medicaments by 'the abortion-monger' among others.⁷⁹ Although the Bill covered all 'quack nostrums', including treatments for cancer and consumption, Hornsby and his colleagues expressed particular concern over the continued advertising of preventives in local papers. Hornsby argued that despite the passage of the Offensive Publications Act and its subsequent amendments, offensive advertisements still found their way into the press. He had himself sent away for a sample of suspect literature after observing a suspicious advertisement in the paper:

The result of that was that I had sent to me a package of stuff from Melbourne, and I found that it consisted of diagrams principally ... The diagrams showed the human body, cleft in twain, and by alphabetical signs indicated certain portions of the human anatomy. One portion was the mouth of the womb, and on that was a preventive. These things were being vended for the purpose of enticing

⁷⁷ Sale of Preventives Prohibition Bill, *Bills Thrown Out*, 1901.

⁷⁸ Quackery Committee Report, p.19.

⁷⁹ *NZPD*, 137, 1906, p.406.

women, more especially young women, to fly in the face of nature and to destroy themselves body and soul.⁸⁰

The vending and use of 'preventives' dominated the second reading debate in the House. During the lengthy debate, a series of speakers reiterated the need for an anti-quackery Bill, particularly with regard to the falling birth rate. Members generally agreed that the birth rate was declining, that this was a serious concern, and that preventives played a significant role in the decline. Through tighter restrictions on the sale of all patent medicines, it was hoped that the sale of contraceptives and abortifacients could be significantly reduced. Although supporters of the Bill acknowledged that registered chemists and doctors could still supply preventives, they argued that 'no reputable man' would choose to do so.⁸¹

Participants in the debate spoke of birth control by means of medicines or appliances as both damaging to national life, and as morally indefensible for the individual. Premier J.G. Ward, a devout Catholic and the father of five children, argued that 'these medicines are used for the purpose of what is equivalent to murder'.⁸² The member for Bruce, James Allen, an active Anglican and father of six, also vigorously expressed his opposition to the sale and use of preventives and abortifacients. 'We want the State', he declared, 'to see that nature is allowed to take the ordinary and proper course. If nature is allowed to take its course, the nation will increase and the people flourish. Prevention will not make the nation what it should be'.⁸³ Pro-natalist politicians repeatedly emphasised the need to breed for the sake of national security.

⁸⁰ *Ibid.*

⁸¹ *Ibid.*, p.413 (J. Allen).

⁸² *Ibid.*, pp.408-09. Joseph George Ward (1856-1930) came from an Irish Catholic background: *DNZB*, Vol.II, pp.565-69.

⁸³ *NZPD*, 137, 1906, p.413. James Allen (1855-1942) was a licensed lay reader in the Church of England: *DNZB*, Vol.III, pp.11-12.

The state, they argued, had a responsibility to encourage citizens to reassess the current practice of reducing family size.

Members of the House recognised that the public were not wholly convinced of the evils of birth control. The Minister of Railways, William Hall-Jones, stressed the need to treat the matter with care:

a Bill affecting the private life of the people, unless it has the support of the people, cannot be effective. It is a matter for the people who believe in the future of our race, and who wish to see it grow and become strong and vigorous, to do what they believe to be right. There is no doubt that under present conditions the British race must suffer ... It is the duty of all - of the clergy, of members of Parliament, of those who occupy public positions - to use the great power they possess to impress upon the people the wrong view taken of a matter so important in the welfare of every civilised country.⁸⁴

The state could not prevent people limiting their families. However, it had a duty to try to persuade its citizens that the use of preventives was neither in their own nor the national interest. The 1907 Quackery Committee, in sympathy with this point of view, recommended that the sale of preventive medicines or appliances be restricted to registered medical practitioners or qualified veterinary surgeons. However, the 1908 Quackery Act did not single out preventives for special attention.⁸⁵ As had happened in 1901, genuine political concern over the declining birth rate failed to result in the introduction of restrictions on the sale of contraceptives and abortifacients. The belief that restricting the sale of preventives would be seen as an unjustified interference with citizens' private lives discouraged the politicians from implementing the Committee's recommendation. During debate on the 1908 Quackery Bill John Hornsby noted with regret that it was 'almost impossible' to legislate against the sale of

⁸⁴ *NZPD*, 137, 1906, p.420.

⁸⁵ Quackery Committee Report, p.ii.

preventives. The best that could be done, he concluded, was to prevent them being advertised and to encourage the public to take the 'right' view of the matter.⁸⁶

The one group of politicians who might have been expected to support the use of birth control during the late 1800s and early 1900s were the freethinkers. Support for birth control had long been a central tenet of the English freethought movement. In 1861 leading English freethinker Charles Bradlaugh had formed the Malthusian League, a body which argued that contraception offered a solution to the poverty of the lower classes. In 1877 Bradlaugh and his partner Annie Besant were prosecuted for obscenity for their involvement in promoting a birth control pamphlet. The trial received a great deal of publicity and Edward Royle has suggested that this may have contributed to the decline of the lower class birthrate in England.⁸⁷ However, New Zealand's freethinking politicians chose to remain silent on this issue. Although William Whitehouse Collins (MHR for Christchurch City 1893-1902) had worked with Bradlaugh and Besant in England he did not use his political position to advance the cause of birth control in New Zealand. Collins had previously been prosecuted in Australia for selling copies of Mrs Besant's *Law of Population*. Initially found guilty, he was later acquitted on appeal.⁸⁸ Fellow freethinker and leading Liberal Robert Stout similarly kept his own counsel on this question. Peter Lineham has argued that Stout's failure to support Bradlaugh's campaign cost him much of his standing in the New Zealand freethought movement.⁸⁹ Political expediency may have

⁸⁶ NZPD, 144, 1908, p.17.

⁸⁷ Edward Royle, *Radicals, Secularists and Republicans: Popular Freethought in Britain, 1866-1915* (Manchester: Manchester University Press, 1980), pp.254-59. See also Lucy Bland, *Banishing the Beast: English Feminism and Sexual Morality 1885-1914* (London: Penguin, 1995), pp.191-196 on the Bradlaugh-Besant case.

⁸⁸ Royle, pp.82-84.

⁸⁹ Peter Lineham, 'Freethinkers in Nineteenth Century New Zealand', *NZJH* 19:1 (April 1985), p.69.

discouraged New Zealand's freethinking politicians from expressing support for the Malthusian position. Birth control was a highly contentious issue both within and outside Parliament. The political and electoral risks associated with speaking out on this question may well have encouraged Collins, Stout and their freethinking colleagues to concentrate upon other important questions. In addition, by the time birth control became a major political issue in the mid-1900s, most of the prominent freethinkers were no longer in Parliament. They had lost their opportunity to offer a different political perspective on the birth control question.

In 1910, continued concern over the declining birth rate led to a significant tightening of the law relating to publications which explicitly dealt with preventives and abortifacients. Clause 6 of the 1910 Indecent Publications Act extended the meaning of an indecent advertisement to cover those advertisements which referred to 'the prevention or removal of irregularities in menstruation, or to drugs, medicines, appliances, treatment or methods of procuring abortion or miscarriage or preventing conception'.⁹⁰ Although politicians in previous years had believed that such advertisements already came within the ambit of the law, existing legislation had proved ineffective in dealing with them.⁹¹ Advertisers had increasingly targeted female consumers in the early years of the century: perhaps because they found censorship law less specific on women's sexual ailments. Women's increased willingness to control their own fertility may also have influenced advertisers.⁹² However, the new clause was not restricted to advertisements. All publications which offered specific advice on how to prevent conception or how to terminate a pregnancy came under its provisions.

⁹⁰ The phrase 'prevention or removal of irregularities in menstruation' referred to advertisements which used these terms as code-words for abortion.

⁹¹ *NZPD*, 149, 1910, p.570.

⁹² Burns, p.53.

The women's organisations remained relatively quiet on the question of birth control during the late 1800s and early 1900s. While some members may well have used birth control pills, potions or devices, many feminists disapproved of preventives. Feminists' social purity-based emphasis upon the need for sexual self control encouraged them to look towards sexual continence as a means of controlling fertility. They supported 'voluntary motherhood' - or women's right to limit their families - but argued that this could be achieved through sexual self control on the part of husband and wife. Many feminists also feared that use of preventives would undermine women's ability to say 'no' to sex. 'It seemed to me', argued English feminist Maria Sharpe, 'one further means of making the woman into an instrument for the use of the man'.⁹³ In New Zealand, as in England, the Women's Christian Temperance Union supported the traditional religious view that sex was intended for procreative purposes only. Articles published in the *White Ribbon* in 1910 and 1912 argued that preventives 'impeded procreation and [were] therefore damaging to the purity of individuals and to national health'.⁹⁴ Condoms and other forms of prophylaxis had long been associated with prostitution and venereal disease. This connection further discouraged many women from supporting the use of preventives.⁹⁵ While feminists may have differed from pro-natalist politicians in their reasons for opposing preventives, many no doubt approved of continued political resistance to the unrestricted advertisement and sale of contraceptives and abortifacients.

⁹³ Not all feminists opposed the use of preventives. See Bland, pp.189-197.

⁹⁴ For a discussion of the WCTU position on birth control see Sarah Dalton, 'The Pure in Heart: The New Zealand Women's Christian Temperance Union and Social Purity, 1885-1930' (M.A. Thesis, Victoria University of Wellington, 1993), pp.116-119, and Miriam Clark, 'Transcending Chastity and Continence: The Provision of Sex Education by Women's Organisations, 1930-1959' (M.A. Thesis, University of Canterbury, 1996). See also the *White Ribbon* 16:185 (November 1910), pp.5-6, and 18:208 (October 1912), pp.13-14, cited in Dalton.

⁹⁵ Bland, pp.189-197.

Many New Zealand doctors also disapproved of preventives. Doctors' prejudice against contraceptives and abortifacients partly stemmed from the association of these devices with quackery. However, many medical practitioners genuinely considered the use of preventives unnatural and potentially harmful.⁹⁶ Concern over the declining birth rate also fed medical opposition to the use of preventives. In an article published in the *New Zealand Medical Journal* in 1905, Dr Herbert Barraclough condemned their use as unnatural, immoral and unpatriotic.

We are confronted with a declining birth-rate in almost every civilised country in the world ... There is undoubtedly an increasing number of women who shirk the cares of motherhood ... I refer more especially to married women, who, for society reasons, or to shirk the domestic cares which the birth of children would bring upon them, deliberately use means to prevent conception. Apart from the disgusting nature of the practice, it seems to me to be in the highest degree immoral ... In some cases the matter is carried so far that even after conception has occurred abortion has been resorted to ... When married women resort to practices of this kind, surely the ultimate abyss of moral degradation has been reached ... I think it behoves the medical profession as a whole to rise up in condemnation of what is fast assuming the proportions of a national crime.⁹⁷

Medical disapproval of preventives persisted well into the 1920s. In 1922, the *New Zealand Medical Journal* strongly condemned married couples' use of preventives: a practice it described as arising from 'selfishness in its most revolting form on the part usually of the mother'.⁹⁸

Political disapproval of preventives and the free circulation of birth control literature similarly persisted into the 1920s. In 1923, a flurry of concern over Ettie Rout's book, *Safe Marriage*, revealed continued official disapproval of birth control practices. Ettie Rout, a New Zealander living in England, was a controversial figure well known for her attempts to provide

⁹⁶ *Ibid.*, pp.200-201.

⁹⁷ *NZMJ* IV:16 (July 1905), pp.205-06.

⁹⁸ Quoted in Jane Tolerton, *Ettie: A Life Of Ettie Rout: 'Guardian Angel' or 'Wickedest Woman'?* (Auckland: Penguin Books, 1992), p.217.

soldiers with venereal disease prevention kits during the First World War. Rout supported the use of preventives for contraceptive as well as disease-prevention purposes. In her book she advocated use of the diaphragm with spermicide as the best means of preventing pregnancy.⁹⁹ In 1923, upon hearing that her book had been banned in New Zealand, Rout enlisted the aid of Sir Archdall Reid to help her fight the ban. Reid, a London doctor whose works on prophylaxis had also been banned by the New Zealand authorities, argued that New Zealand's censorship laws ought to be amended. His comments sparked a public debate on censorship in the letters pages of the New Zealand papers.¹⁰⁰

The debate prompted a re-examination of censorship policy. In a memo to the Minister of Internal Affairs, the Comptroller of Customs declared that

The present agitation concerning indecent literature apparently rises from a conflict of opinion as to what constitutes an 'immoral or mischievous tendency'. It is quite evident that a large section of the community does not regard minute directions as to the application of contraceptive measures as indecent.¹⁰¹

Acknowledging that some people felt that 'their liberty of action [was] being unnecessarily interfered with', the Minister, William Downie Stewart, established a Board of Censorship to examine the problem of indecent publications.¹⁰² In a report issued in 1923, the newly formed Board declared that it did not wish to interfere with publications which dealt with the 'Malthusian problem' or birth control as economic or ethical questions. However, it had some

⁹⁹ *Ibid.*, p.222. See Chapter V, pp.229-31, regarding Ettie's role in debates over prostitution and venereal disease in New Zealand and overseas. Ettie argued that contraception was preferable to abortion, which she considered the most common form of family limitation: Ettie Rout, *The Morality of Birth Control* (London, 1925), pp.45-54 (ATL).

¹⁰⁰ See newspaper clippings in Indecent and Obscene Publications 1917-30, C 1 24/43/- (NA).

¹⁰¹ Memo dated 27 February 1923, C 1 24/43/- (NA).

¹⁰² The Board was to confirm or reject the findings of the Censor with the Attorney-General to have the final word on any issue: C 1 24/43/- (NA).

difficulty assessing those works which also contained information on 'direct and indirect means of preventing conception'. The Board concluded that under the 1910 Act, it had no choice but to ban books and pamphlets 'in which the use of contraceptives is either advocated or explained'. Rout's book fell into this latter category. It remained on the list of prohibited publications until 1928.¹⁰³

Continued belief in the need to maintain a healthy and numerically strong white population underpinned medical and political resistance to the free circulation of birth control literature. The ravages of war and the recent influenza epidemic, together with the rise of eugenic ideology, concentrated medical and political attention upon national fitness and strength. Pro-natalist doctors, politicians and civil servants condemned the use of preventives by the 'fit' (by whom they meant the healthy and prosperous middle classes) whose potential offspring were the nation's insurance against future decline or decay.¹⁰⁴ Middle-class willingness to use preventives despite the alleged threat such practices posed to national interests remained a serious concern for pro-natalist politicians. However, while politicians and civil servants felt justified in maintaining strict controls upon the dissemination of birth control information throughout the period under study, they proved reluctant to impose a ban upon the sale of contraceptives themselves.

III

While campaigns to restrict public access to 'indecent' material owed much to the rise of the medical profession, the social purity movement and pro-natalist concern, they also owed much to the growth of new audiences for printed material. During the late 1800s and early

¹⁰³ Philippa Mein Smith, *Maternity in Dispute: New Zealand, 1920-1939* (Wellington: Historical Branch, Internal Affairs, 1986), p.110.

¹⁰⁴ *Ibid.*, pp.24, 109-111.

1900s, opponents of indecent advertisements, birth control publications and other forms of 'immoral' literature argued that rising literacy levels and increased availability of indecent publications had led to a significant increase in the numbers of citizens exposed to corrupt and obscene material. Similar comments had been made during the early 1800s following the promotion of mass literacy in the 1780s by religious and social activists.¹⁰⁵ The spread of mass-circulation sensationalist newspapers from the mid-1800s, together with the more widespread availability of cheap books and other printed material caused a renewal of concern during the 1880s and 1890s.

Concerned commentators feared the power of the printed word 'to corrupt individual character and capacity for right judgment'.¹⁰⁶ The circulation of indecent material amongst the poor at a time of rapid social change and increased literacy accelerated such anxieties.¹⁰⁷ As M.J.D Roberts has argued, 'As the market for printed publications expanded and diversified, it became a matter of urgency to reconcile the liberties of the culturally trustworthy with the perceived needs of the culturally vulnerable'.¹⁰⁸ Material which might be harmless if read by a few highly educated and adult members of the middle or upper classes could cause harm if read by a different audience, principally the vulnerable young and members of the working classes. Middle-class moralists deplored the 'depraved' reading tastes of the mass public. They campaigned for better policing of 'respectable' culture and for the suppression of immoral and subversive literature. The circulation of such material undermined the social purity ethic they wished to impose on all levels of society.

¹⁰⁵ Roberts, 'Blasphemy', p.146.

¹⁰⁶ *Ibid.*, p.146. See also Bristow, pp.200-01.

¹⁰⁷ Bristow, pp.200-201.

¹⁰⁸ Roberts, 'Blasphemy', p.143.

New Zealand had a high level of literacy in the 1880s and 1890s.¹⁰⁹ In his *New Zealand Medical Journal* article Truby King argued that more than ever before, the young, the foolish, the ignorant and the vulnerable were being exposed to dangerous and immoral ideas and practices. 'Subtle influences, tending to deprave public morals', he argued,

have no doubt existed in all large communities from the earliest times, but have there been in any preceding centuries of the world's history such facilities for widespread *instruction* in immorality in the present day? Printing machines in plenty are able and willing to speak in any terms to anyone, old or young, upon any subject, provided there be prospects of profit to be derived from the work. The powers of reading and writing are no longer restricted to the few and the learned, and at every turn he who can read has cast up before him as truths the writings of some vile charlatan or speculative immoralist. Formerly a man's power of directly misleading his fellow creatures must usually have been restricted more or less to his immediate surroundings; but now, without a presence and without a name, any human vampire may gain for his teachings a wide acceptance through the Press if he only has the cunning to adroitly pull the strings of a few human weaknesses.¹¹⁰

Truby King and the purity reformers firmly believed that indecent literature had the power to corrupt vulnerable minds, and in particular, the minds of the young, the impressionable and the poorly educated. They also believed that such works undermined society as a whole. Public decency rested upon private respectability and moral rectitude. The reformers hoped that the passing of the 1892 Offensive Publications Act would protect society from the immoral and unhealthy influences of obscene and immoral literature.

Despite the passage of the Act, concern over the spread of immoral literature, as well as immoral advertisements, continued to be expressed during the 1890s and early 1900s. In 1894, the Attorney-General Sir P.A. Buckley noted that indecent publications' offences 'of a very serious nature, such as one could scarcely conceive for filth and abomination, had recently been

¹⁰⁹ Jeanine Graham, 'Settler Society', in G.W. Rice (ed), *The Oxford History of New Zealand* (Auckland: Oxford University Press, 1992), pp.129-30.

¹¹⁰ King, 1890, p.16.

brought under the notice of the Government'.¹¹¹ The judges in these cases, he declared, had found themselves unable to impose sufficiently severe penalties upon offenders. Under the 1892 Act first-time offenders faced a maximum penalty of a five pound fine or three months imprisonment. The 1894 Offensive Publications Amendment Act raised the penalty for individuals convicted of 'gross offences' to a maximum of two years imprisonment with hard labour.¹¹² Parliament amended the legislation again in 1905. Following an unsatisfactory conclusion to a contentious court case, Parliament tightened up provisions relating to a defendant's use of ignorance of a publication's contents as a defence. The case in question, *Rex v. Ewart*, involved the sale of a copy of the *Sydney Truth* which, it was alleged, contained indecencies. The seller, Mr Ewart, escaped a heavy penalty on the grounds that he had been ignorant of the paper's contents.¹¹³ Neither the 1894 nor the 1905 amendments inspired debate in either the House of Representatives or the Legislative Council. Indeed, in 1905 the leader of the Opposition, W.F. Massey, expressed his wholehearted support for the Government's attempt to tighten the country's censorship legislation. Politicians from all sides clearly considered stricter censorship legislation to be in the national interest.

During the early 1900s political concern over indecent publications spilled over into concern over public attendance at trials involving divorce and sexual assault cases. Truby King had criticised 'indecent reports of rape or divorce cases' in his 1890 *New Zealand Medical*

¹¹¹ *NZPD*, 83, 1894, p.611.

¹¹² As in the case of the postal law amendments the proposal provoked little response from politicians. Legislative Councillor William Downie Stewart provided the sole dissenting voice on the proposed amendment. Stewart considered the existing penalty a sufficient deterrent: *NZPD*, 83, 1894, p.610.

¹¹³ See Burns, pp.20-23, for a discussion of the court case and its legal significance. See also *NZPD*, 135, 1905, pp.524, 588.

Journal article.¹¹⁴ In 1903 Harry Ell, the member of the House for Christchurch City, took the issue further. Ell drew the attention of the House to a resolution passed by several Christchurch social work organisations which argued that Supreme Court Judges and Stipendiary Magistrates 'should have the power to clear their courts during cases of gross immorality, especially in the cases of indecent assaults'. 'Frequent complaints were made', declared Ell, 'that young men, in order to gratify a morbid craving, remained in Court during the hearing of these cases'. In response, the Minister of Justice, James McGowan, promised to consult the judges and the Magistrates on the subject.¹¹⁵ Evidently the judicial authorities agreed that they required increased powers over their courtrooms. In 1905 an amendment to the Criminal Code Act gave judges more general powers to clear courts and to forbid the reporting of proceedings.¹¹⁶

As was the case during debate over the censorship reforms of the late 1890s, youth came in for special scrutiny during discussion of the 1905 Criminal Code Amendment Bill. McGowan's Bill included a section barring those aged under twenty-one from attending cases involving 'immorality'. The attendance of youths at these cases, he declared, was neither in their own nor the community's interest.¹¹⁷ However, although members of the House endorsed this suggestion, it was criticised by members of the Legislative Council who felt it did not go far enough. The Council argued that the attendance of women and old men at indecency trials was also cause for concern. 'Very often', noted the Attorney-General Albert Pitt, 'it occurs that in cases containing evidence of an unsavoury character the Court requests that "decent females and

¹¹⁴ King, 1890, p.18.

¹¹⁵ *NZPD*, 124, 1903, pp.64-65.

¹¹⁶ Criminal Code Act Amendment Act, *NZ Statutes*, 1905, s. 3 & 4. The 1898 Divorce Act had given judges these rights in relation to divorce cases. The 1905 Act extended this power to cover all cases where discretion was required in the interest of public morality.

¹¹⁷ *NZPD*, 132, 1905, p.238.

children" should withdraw; and in some cases, unfortunately, the hint is not taken'. Furthermore, declared Councillor Henry Feldwick, it was 'well known to every honourable member that there are as many prurient-minded old men as there are young men'. They too ought to be excluded from 'gloating' over the proceedings.¹¹⁸ It would appear that a significant number of the public considered indecency trials a form of entertainment. Rather than providing an instructive example of the ultimate consequences of immorality - public shaming and/or imprisonment - the trials too often attracted a prurient or voyeuristic interest from those who had nothing better to do than attend the trials or read about them in the papers. The new legislation, it was hoped, would help protect the public from indulging their unhealthy taste for immorality, depravity and scandal.

Concern over indecent literature also spilled over into concern over indecent pictures. In 1906, a flurry of public and political concern over the sale of 'naughty' postcards featuring naked and semi-nude women resulted in the passing of a new Offensive Publications Act. The Act considerably extended the state's power to search out and destroy indecent or obscene publications. Several cases involving the sale of allegedly indecent postcards had recently come before the courts. The Minister of Justice, James McGowan, argued that the existing legislation placed barriers in the way of police who wished to search premises for indecent material.¹¹⁹ Before the police could search a property they had to arrest the owner of the material. The Minister wished to facilitate the process by removing the need to make an arrest before a search could be carried out. Under the proposed legislation, it would be possible to search a property if an individual complained on oath that obscene material was being held for sale, distribution or

¹¹⁸ *Ibid.*, pp.580-83.

¹¹⁹ *NZPD*, 138, 1906, p.274.

exhibition for gain and a Justice of the Peace deemed the complaint to be valid. If necessary, force could be used to break down doors to facilitate the search. In addition, the Minister proposed that Justices of the Peace be empowered to order the destruction of the offending publications. Although customs legislation provided for the destruction of imported publications, the law contained no such provision concerning material published within New Zealand.¹²⁰

The powers sought by the Minister had long been held by English police and courts under the Obscene Publications Act of 1857.¹²¹ Despite the agitation over indecent publications during the 1890s New Zealand's legislators had not felt the need to take up the British Act. Their focus on indecent advertisements and quacks' use of the postal system in this period may have led them to overlook this aspect of the British legislation. Politicians' failure to adopt these powers earlier may also have been due to a feeling that the problem was not so serious in the colony that it required the introduction of such extreme measures. Customs legislation played an important role in preventing indecent material entering the country. Problems in identifying indecent imports, or an upsurge in local production of postcards, may also have contributed to the problem. Whatever the reasons for the belated introduction of the British provisions, when the police encountered problems in suppressing the trade in dirty postcards in 1906, the British legislation provided the Minister of Justice with a convenient model for legislative reform.¹²²

In contrast to many of the earlier debates over censorship legislation the 1906 Offensive Publications Bill sparked lively debate within the House of Representatives. Three issues

¹²⁰ Burns, pp.30-31.

¹²¹ M.J.D. Roberts, 'Morals, Art, and the Law: The Passing of the Obscene Publications Act, 1857', *Victorian Studies* 28:4 (Summer 1985), pp.619-22; Bristow, p.47; Burns, pp.29-30.

¹²² *NZPD*, 138, 1906, p.274.

dominated the debate, none of which had featured prominently in any of the previous debates. The first concerned issues of individual privacy and the sanctity of the home. The second addressed the competence of authorities to determine what was and what was not indecent. The third involved a debate about whether there were excessive levels of prudery within society.

Although McGowan's introductory speech had indicated that the proposed legislation was intended to deal with shopkeepers who stocked and sold indecent material, opponents of the Bill focused upon its possible application to citizens' private and domestic lives.¹²³ W.H. Herries, the Conservative member for the Bay of Plenty, led the attack. 'There is an old saying', he declared, 'that an Englishman's home is his castle, but the laws that this Government are bringing in seem to be designed to break down that old tradition.'¹²⁴ Thomas Wilford, an urbane lawyer and the Liberal member for Hutt, agreed.¹²⁵ Wilford expressed his general disapproval of indecent publications but launched a scathing attack upon what he considered 'legal burglary' - the unjustified invasion of private premises and destruction of private property by agents of the state. 'If', he declared,

a man keeps locked in some room in his house a dirty, filthy book or a disgusting picture which can be shown by him, for some filthy satisfaction to himself, to some people who are also disgusting and depraved enough to take a

¹²³ *Ibid.*

¹²⁴ *Ibid.*, p.275. William Herbert Herries (1859-1923), the son of a barrister, had received a Bachelor of Arts degree from Trinity College, Cambridge. Together with several of his fellow politicians he feared that uneducated or prejudiced Justices, men who perhaps failed to share his cultivated tastes, could too easily abuse the new powers offered under the proposed legislation: G.H. Scholefield (ed.), *Dictionary of New Zealand Biography*, Vol I (Wellington: Department of Internal Affairs, 1940) p.382.

¹²⁵ Thomas Mason Wilford (1870-1939), a keen participant in musical comedy, had a rather theatrical personality. A genial man in general, his speech during the second reading of the 1906 Offensive Publications Bill, displayed considerable scorn for the abilities of the Justices who lacked the benefits of his legal training: *DNZB*, Vol.III, pp.568-69.

delight in such a sensual exhibition - well let it be hidden in that particular house or dwelling.¹²⁶

Wilford argued that a man ought to be able to hold his house 'sacred and inviolate from any outsider'.¹²⁷ He accompanied his impassioned defence of the sanctity of the home with stringent attacks upon the ability of the Justices to make sensible decisions concerning search and destroy missions and upon the power the Bill offered nosy and prejudiced individuals over their neighbours.¹²⁸ These two criticisms became the focal points of the debate.

Several of those who participated in the debate felt that the Bill offered individual Justices too much power. One of the recent postcard court cases had involved photographic reproductions of paintings by Lord Leighton and Paul Thumann: *Psyche's Bath* and *Psyche at Nature's Mirror*, both recognised works of art.¹²⁹ During the court case a number of respected figures, including an ex-Mayor of Auckland, had testified to the artistic worth of *Psyche's Bath*. No doubt with this recent case in mind, Charles Major, the member for Hawera, argued that

there is a very great danger that some Justices of the Peace may hold certain views that would make them take exception to many pictures, statuary, and works of art, and so-called offensive publications. There are many people with prurient minds who would cause a great deal of trouble in connection with such cases. There are people who have no sense of art, and who would regard anything in the nature of the nude as being an abomination and therefore an offensive publication. Therefore, under this Bill it is possible that some priceless works of art might be destroyed on the *ipse dixit* of a Justice of the Peace, who might be a crank on the subject.¹³⁰

¹²⁶ NZPD, 138, 1906, pp.275-76.

¹²⁷ He did acknowledge, however, that the 'castle' could justifiably be breached upon the issue of a warrant for gaming, coining and alcohol-associated offences: *Ibid.*, p.276.

¹²⁸ *Ibid.*, pp.275-77.

¹²⁹ Burns, pp.26-29; Christoffel, p.7.

¹³⁰ NZPD, 138, 1906, p.275. Charles Major (1859-1954), unlike Herries or Wilford whose views he shared on this matter, had not received a tertiary education. Major was educated in Jersey. He emigrated to New Zealand at the age of twelve, worked in a store and later found employment as a land broker, estate agent and law clerk: G.H. Scholefield & E. Schwabe (eds.),

Other comments expressed by Major's colleagues reveal a considerable lack of regard among some politicians for the abilities and judgment of the unpaid and untrained Justices.¹³¹

The Obscene Publications Bill of 1857 had encountered similar objections in England fifty years earlier. As a result the Act required that search warrants be issued by either a stipendiary magistrate or by two Justices of the Peace.¹³² Some members of the New Zealand Parliament suggested that McGowan's Bill adopt a similar arrangement but their amendment failed by thirty-nine votes to twenty-five.¹³³ A majority of members supported the involvement of a single Justice in these cases on the grounds that it would be a more efficient way of dealing with the problem.¹³⁴ Not all agreed with the critics that uneducated backblocks Justices of the Peace would prove themselves unable to exercise appropriate judgment on questions of indecency. As the Minister of Justice himself argued, 'although the possession of a fine education may be of great advantage to the individual who has it, these things do not provide a man with ordinary common-sense and brains'.¹³⁵

Elements of a backlash against the social purity movement can also be detected in some politicians' speeches on the proposed legislation. The social purity movement had been

Who's Who in New Zealand (Wellington: Gotch & Gotch Proprietary, 1908), p.102; *CNZ*, Vol.VI, pp.224-25.

¹³¹ Charles Gray, a draper, temperance advocate and the member for Christchurch North, offered an example of the fallibility of some Justices: 'I recollect [a] J.P. who was always ready to sign anything brought before him, and on one occasion a few friends combined to draw up a document whereby this gentleman actually signed his own death warrant. One hears of cases occasionally throughout the colony which cause one to lose faith in some of the J.Ps.': *NZPD*, 138, 1906, p.278.

¹³² Roberts, 'Morals', p.620.

¹³³ *NZPD*, 138, 1906, p.546. Liberals voted on both sides of the issue. Liberals made up sixteen of the twenty-seven members who supported amending the Bill and thirty-seven of the forty-one who favoured the status quo.

¹³⁴ *Ibid.*, pp.279, 281.

¹³⁵ *Ibid.*, p.283.

particularly vocal during the 1890s and early 1900s. Members of the women's and other reform organisations had loudly campaigned against prostitution, juvenile 'depravity' and other instances of immoral behaviour. They did not oppose indecent publications in the organised way in which they opposed other aspects of immorality.¹³⁶ However, reformers' reputation for interference in other people's private lives made them useful targets for those politicians who wished to discredit the proposed legislation. Thomas Wilford displayed a particular contempt for members of the 'Poke-your-nose-into-everybody's-business-Society', a term used in other debates to refer to social purity organisations.¹³⁷ A.L.D. Fraser, the member for Napier, similarly deplored the narrow-minded behaviour of some social purity supporters. Referring to the case featuring the reproduction of *Psyche's Bath*, Fraser declared that New Zealand was fast reaching a stage

when no broad-minded, clean-minded man will be able to live in this colony, and it looks as if we are to be dictated to and governed by that smug, sycophantic, hypocritical - I was going to use the word "contemptible" - class of people who can only look through very narrow-minded, jaundiced eyes, and to whom everything is bad. We are told that nothing is bad, but thinking makes it so, and it seems clear that in regard to many works of art certain hysterical persons are transforming them by a depraved mind into indecency.¹³⁸

Neither Wilford nor Fraser disputed that those who sold or circulated indecent or improper literature or pictures should be severely dealt with.¹³⁹ However, they feared that the proposed

¹³⁶ In contrast to their vigorous participation in other sexual debates, members of the WCTU do not appear to have played an active role in purity-based opposition to indecent publications. Apart from brief references to indecent material at their annual conventions in 1890, 1892 and 1899, the WCTU records do reveal great concern over immoral or obscene publications: WCTU Conference Minutes, Annual Conventions 1886-1906 (MS Papers 79-057-09/03, 09/09, 09/10, 09/12, 09/13, ATL). The NCW displayed a similar reticence on censorship issues. The decline of the NCW during the early 1900s may partly explain their lack of participation in debate over the 1906 censorship initiatives.

¹³⁷ NZPD, 138, 1906, p.277.

¹³⁸ *Ibid.*, p.280. Alfred Levavasour Durrell Fraser (1862-1919), was a teacher.

¹³⁹ *Ibid.*, pp.276, 281.

legislation provided for unwarranted interference in individuals' private and domestic lives. Ordinary citizens and backblock Justices should not be given the right to intrude upon the lives of their neighbours in a potentially arbitrary and unjust fashion.

Despite the impassioned speeches of men such as Wilford and Fraser the Bill easily passed its second and third readings in the House and in the Legislative Council. Most members evidently accepted that it was reasonable 'that in these days strong measures should be taken to suppress the growing tendencies to evil'.¹⁴⁰ Existing legislation already allowed for the issuing of search warrants in cases where individuals were believed to be engaged in criminal or immoral activities.¹⁴¹ Persons who dealt in corrupting material, whether literary or pictorial, undermined public morality. In dealing with such material they forfeited their rights to privacy.

Four years after Parliament enacted the 1906 Offensive Publications Act the politicians once again reassessed the nation's censorship legislation. In 1910, influenced by debate in England and America on the need for stricter censorship laws, the Attorney-General, J.G. Findlay, introduced a comprehensive Indecent Publications Bill into the Legislative Council.¹⁴² The Bill drew together all previous Offensive Publications Acts and Police Offences Acts which dealt with indecent and obscene publications. However, Findlay's Bill was no mere consolidating measure. It significantly expanded and clarified the law on censorship.

Findlay argued that in Britain, America, and New Zealand, a rising tide of indecent literature threatened the moral health of the people. Young people's access to degrading publications caused him particular concern. 'In this country, as elsewhere', he declared,

¹⁴⁰ *Ibid.*, p.281.

¹⁴¹ Such activities included the illegal sale of alcohol: *Ibid.*, p.282.

¹⁴² Findlay was particularly interested in a report issued by the Joint Select Committee of the British Legislature on Lotteries and Indecent Advertisements in 1908: *NZPD*, 149, 1910, p.569.

the budding rose of boyhood - aye, and of girlhood, too - has from certain sources been undergoing a pollution which it is the bounden duty of every intelligent legislator to stop into thousands and thousands of homes in this country and into thousands and thousands of young hands is passing literature and journalism which can be called by no other name than degrading; and that stream, if we can stop it, has got to stop.¹⁴³

Findlay's remedies included increasing the liability of newspaper printers, publishers, proprietors, managers, editors and subeditors for the material published in their papers and further limiting defendants' use of ignorance as a defence. He also introduced new safeguards. Bearing in mind the criticisms made of 'puritans' and 'faddists' in 1906, Findlay's Bill required that all prosecutions instigated by complaints received from members of the public be approved by the Attorney-General.¹⁴⁴

As had happened in previous censorship debates virtually all of the politicians who spoke on the proposed legislation lauded the principle of placing tighter restrictions on the circulation and sale of indecent publications. Although Findlay's Bill stimulated extensive debate in the Council over its various clauses only one Councillor argued that the proposed legislation was unnecessary. The eighty-nine year old Henry Scotland detected a touch of 'puritanical cant' in the Bill. 'Publications such as you would prohibit', he declared, 'can only corrupt those who are laying themselves out to be corrupted, and you cannot protect those who will not protect themselves'.¹⁴⁵ However, the rest of Findlay's colleagues endorsed his initiative. Their concerns over the Bill lay in fine-tuning, moderating or clarifying its provisions.

The concerns raised in 1906 over the implications that tighter censorship legislation might have for individual liberties reappeared during the debate in 1910. Two issues caused

¹⁴³ *Ibid.*

¹⁴⁴ *Ibid.*, pp.568-72; Burns, pp.44-51.

¹⁴⁵ *NZPD*, 149, 1910, p.576.

particular concern. The first involved the extended powers granted to the police. Findlay proposed that constables be empowered to launch a prosecution without first obtaining the consent of the Attorney-General. However, some of Findlay's colleagues lacked his faith in the ability of the common policeman to judge indecency or to act with discretion in these matters. Seven speakers objected to the greater powers given to police in the Bill.¹⁴⁶ After listening to several speeches warning against exposing the public to over-zealous policing by ignorant and uneducated policemen Findlay agreed to limit their authority: police prosecutions would also require the leave of the Attorney General.¹⁴⁷ A second concern - that innocent parties might be prosecuted because, unaware of the nature of the indecent material, they delivered or otherwise handled it - also resulted in an amendment. Implicated individuals would be able to defend themselves in court if they could prove that they had taken reasonable steps to ensure that the material they handled was not indecent.¹⁴⁸

The debate over the Indecent Publications Bill also revealed a new concern over indecent fiction.¹⁴⁹ The advertisements and postcards which had dominated earlier debates gave way to extended speeches concerning indecent or offensive novels. Despite the flurry of concern over Zola's works in 1890, indecent novels attracted little attention from New Zealand's politicians prior to 1910. However, debate over the Attorney-General's Bill revealed a growing alarm over the new form of 'sex novel'. Legislative Councillor Oliver Samuel remarked upon

¹⁴⁶ *Ibid.*, p.579.

¹⁴⁷ See Burns, pp.48-49.

¹⁴⁸ *Ibid.*, p.50. See also Herries' speech during the second reading of the Bill in the House of Representatives, *NZPD*, 151, 1910, p.344.

¹⁴⁹ See David Saunders, 'Victorian Obscenity Law: Negative Censorship or Positive Administration' in Paul Hyland & Neil Sammells, *Writing and Censorship in Britain* (London & New York: Routledge, 1992), pp.162-64, regarding the relative lack of concern over indecency in serious fiction during the 1800s.

the difference between modern works and the older 'dirty' novels. The new works, Samuel argued, lacked the 'grossness of word which is noticeable in the older authors'. They were more subtle and consequently more dangerous. The new fiction, he declared,

was most insidiously immoral in its tendency - the sort of thing that was not calculated to shock, but was unquestionably calculated to demoralize; and that is the most dangerous of all possible matter - an alluring description of those things which if they were represented and viewed in their proper light would be or should be disgusting, but which when wrapped up in a certain alluring manner and with a certain art ... is calculated rather even to charm than to produce the natural and proper effect which it should do.¹⁵⁰

However, other Councillors expressed concern that older works might suffer from more restrictive legislation designed to counter the new literature. The elderly Henry Scotland feared that the proposed legislation could be used against such classic works as Chaucer's *Canterbury Tales*, Shakespeare's *Romeo and Juliet*, or the novels of Fielding, Smollett and Sterne.¹⁵¹ In reply, Findlay reassured his colleagues that the proposed legislation would not be used to condemn these works. The Bill, he declared, contained a significant new protective clause which excluded fine literature and medical texts from prosecution. Under clause 5 magistrates had to take into consideration the 'literary, scientific or artistic merit or importance of the document or matter'.¹⁵² 'What I desire to impress upon the Council', he declared, 'is this':

It is not the class of book to which the Hon. Mr Scotland refers that we really need be afraid of. The coarse vulgarity of such books as 'Roderick Random,' 'Moll Flanders,' and other works of Fielding and Defoe - the coarse vulgarity of these books would shock any young girl's feeling, and she would pitch it aside as altogether unworthy of the training she has received. The danger lies in these books which treat with soft delicacy the dangerous vices of the community.... the author treats with such delicacy and sophistry these vices that they lost their

¹⁵⁰ NZPD, 149, 1910, p.574.

¹⁵¹ *Ibid.*, p.577.

¹⁵² *Ibid.*, p.569. Burns, pp.44-45.

coarseness and become dangerously attractive. That is the class of literature that we have to be vigilant about.¹⁵³

The introduction of clause 5 represented a significant departure from the existing law. In past decades legislators had not intended that laws intended to combat clearly pornographic works would be used against serious literature.¹⁵⁴ The realisation that serious or classic works could be targeted under the legislation encouraged a reassessment of the law. Findlay intended his new clause to protect serious literature from the depredations of 'faddists'. Findlay recognised that 'perfectly sincere, clean-minded people' could differ markedly in their opinion of different works, old or new. However, he felt confident that his Bill avoided that 'fussy, punctilious prudery which, if it had its way, would probably kill true literature anywhere'.¹⁵⁵

As had been the case for earlier censorship initiatives the Indecent Publications Bill passed into law without encountering serious opposition from politicians or from members of the public. Legislative Councillor C.M Luke appears to have summed up the general mood of those who participated in the debate:

No doubt [this legislation] pries into the domestic side of life, yet I believe the gains so far outweigh the difficulties that it is a justification for putting legislation of this character on the statute book. We cannot too jealously guard the moral well-being of the youth of this land.

Findlay's Bill, with a few minor amendments, became the Indecent Publications Act of 1910.

The Act remained unaltered on the statute books until 1954.¹⁵⁶

¹⁵³ *NZPD*, 149, 1910, p.639. Findlay held up the novel *Anna Lombard* as an example of this new form of corrupt fiction.

¹⁵⁴ Saunders, p.162.

¹⁵⁵ *NZPD*, 149, 1910, p.569.

¹⁵⁶ The 1913 Customs Act brought customs legislation into line with the 1910 Indecent Publications Act.

IV

The rise of commercial cinema during the late 1890s and early 1900s gave rise to a new censorship campaign between 1908 and the 1920s. Just as technological developments in the printing industry and the subsequent proliferation of cheap printed works had fed earlier fears over potential moral corruption of the young, the advent of the silent film inspired concern over the power of the new medium to expose the young to degrading and demoralising influences.

Paris screened the world's first commercial film in 1895.¹⁵⁷ New Zealand, Britain and America followed suit in 1896 and the silent film industry rapidly took off as a popular and relatively cheap form of public entertainment.¹⁵⁸ The growing popularity of the medium meant that by the 1910s film reached a greater proportion of the public than any other form of entertainment.¹⁵⁹ Films initially featured scenes from real life, but film-makers soon ventured into multi-reel melodramas. Dramas and comedies began to dominate screenings.¹⁶⁰ The content of the early moving pictures soon drew critical comment from middle-class moralists fearful of the influence of moving pictures upon impressionable children and adults.

¹⁵⁷ Lisa Cutfield, 'Silent Films and Censorship, New Zealand 1908-1928' (B.A. (Hons.) Research Essay, University of Otago, 1994), p.6.

¹⁵⁸ Cutfield, p.6; Roy Shuker & Roger Openshaw, 'New Zealand Youth and Silent Movies', *New Zealand Journal of Educational Studies* 22:1 (1987), p.88. On the rise of cinema in Britain see Annette Kuhn, *Cinema, Censorship and Sexuality, 1909-1925* (London & New York: Routledge, 1988), p.13; and Tom Dewe Mathews, *Censored: The Story of Film Censorship in Britain* (London: Chatto & Windus, 1994), p.7. On America, see Daniel Czitrom, 'The Politics of Performance: Theater Licensing and the Origins of Movie Censorship in New York', in Francis G. Couvares (ed.), *Movie Censorship and American Culture* (Washington & London: Smithsonian Institution Press, 1996), p.20.

¹⁵⁹ Cutfield, p.6.

¹⁶⁰ *NZPD*, 177, 1916, p.572.

In New Zealand, criticism of the new medium centred on choice of material shown and upon the influence the 'film habit' had upon youth behaviour.¹⁶¹ Critics began to call for some form of censorship to be imposed on films from 1909. Concerned at the potential impact of a screening of the World Heavyweight Boxing Championship on the 'small boy inhabitant of the community', the National Council of Churches unsuccessfully lobbied the Government to ban the film.¹⁶² In 1911 the Women's Christian Temperance Union expressed its disapproval of many films screened in the colony. The Union noted that while moving pictures could be used for sound educational purposes, they were also 'effective teachers of immorality and vice'. The Union urged the Government to appoint a Censor to examine all films intended for public exhibition.¹⁶³ The New Zealand Catholic Federation played an important role in the early campaign for regulation of the film industry. Initially the Federation focused upon anti-Catholic film content. However, it soon broadened its approach to encompass all morally-dubious material.¹⁶⁴ Educational experts also joined in the rising tide of criticism of unregulated films.¹⁶⁵ Religious groups, women's organisations and educationalists in Britain and America similarly campaigned for tighter controls on films.¹⁶⁶

Critics of the film industry opposed the dominance of the 'sex interest' in many films, including story-lines based upon tales of infidelity and illegitimacy. They similarly condemned depictions of criminal activities, violence and drunkenness.¹⁶⁷ Commentators expressed

¹⁶¹ Early complaints in the United States and Britain also focused upon Sunday screenings and upon the fire risks associated with crammed theatres: Czitrom, p.22; Kuhn, p.16.

¹⁶² Shuker & Openshaw, p.88.

¹⁶³ WCTU Minutes, National Convention, New Plymouth, 1911 (MS Papers 79-057-09/10, ATL).

¹⁶⁴ *NZPD*, 177, 1916, p.572. Cutfield, pp.11-12.

¹⁶⁵ Shuker & Openshaw, p.89.

¹⁶⁶ Czitrom, pp.22-36; Parker, pp.73-81; Kuhn, pp.13-24; Mathews, pp.8-27.

¹⁶⁷ Cutfield, p.17.

particular concern over the impact of these images upon the vulnerable young. During the late 1890s and early 1900s the moral welfare of the young had become a major political and public issue.¹⁶⁸ Censorship supporters drew upon established child-saving rhetoric to bolster their case.¹⁶⁹ Children and youths, they argued, were being exposed to unwholesome and indecent images and plot-lines which were only too likely to encourage immoral activity. Concern over the popularity of sensationalist melodramas and their impact upon the nation's children culminated in an influential public conference on film censorship in 1915.¹⁷⁰

In 1916 the Minister of Internal Affairs, George Warren Russell, responded to the pleas of the pro-censorship lobby and introduced a Cinematograph-Film Censorship Bill into Parliament. The Bill proposed that the Governor be empowered to 'appoint such fit persons to act as censors as are deemed necessary'. Censors would have the power to ban 'any film which depicts any matter that is against public order and decency ... or the exhibition of which for any other reason is, in the opinion of the censor, undesirable in the public interest'. The Bill also provided for films to be screened 'subject to the condition that the film shall be exhibited only to any specified class or classes of persons'. This clause allowed censors to not only place age restrictions on films but to require that the film only be screened in front of single-sex audiences.¹⁷¹

¹⁶⁸ See Chapter VI, *passim*.

¹⁶⁹ Alison M. Parker, 'Mothering the Movies: Women Reformers and Popular Culture', in Francis G. Couvares (ed.), *Movie Censorship and American Culture* (Washington & London: Smithsonian Institution Press, 1996), p.73.

¹⁷⁰ The conference was organised by the Catholic Federation but received wide support from other churches and concerned groups: Cutfield, p.13.

¹⁷¹ Russell remarked that this latter condition might apply to educational films which dealt with venereal disease: *NZPD*, 177, 1916, pp.572-73.

Russell's decision to impose censorship on the film industry at this time owed much to the persistent and organised lobbying of the religious and other organisations. However, war considerations also influenced his actions. Russell noted that earlier that year

a series of pictures were shown representing war in its ghastliest and most dreadful aspects - men wounded and dying being dragged out of the trenches, and all that kind of thing. No doubt these pictures were 'fakes'. It could not be said that they were against public order and decency, but they were certainly very detrimental to the recruiting that was going on throughout New Zealand.¹⁷²

The need to place restrictions on this sort of film encouraged the Minister to extend the Bill's provisions beyond the 'order' and 'decency' issues highlighted by the reform groups. It also encouraged more urgent consideration of the issues of film censorship.

Only one member of the House challenged the introduction of the proposed legislation. John Payne, the member for Grey Lynn, and a pioneer of film in New Zealand, protested that the measure constituted unjustified interference with the film industry. If 'there is a clean show in the world today', Payne declared, 'it is the New Zealand picture show'.¹⁷³ Payne argued that the film industry regulated itself. The 'public of New Zealand', he argued, 'will not stand suggestiveness of the kind that has been referred to, and the entertainers of New Zealand are not such fools as to bump right up against the public when it means taking money out of their pockets'.¹⁷⁴ In Britain and America, members of the film industry had largely managed to forestall official censorship by establishing voluntary industry-supported censorship boards.¹⁷⁵ Payne declared that by the time a film reached New Zealand it had already passed these bodies. Consequently, New Zealand did not require its own film censors.¹⁷⁶ Payne also challenged the

¹⁷² *Ibid.*, p.573.

¹⁷³ *Ibid.*, p.574. On Payne see *DNZB*, Vol.III, pp.393-94.

¹⁷⁴ *NZPD*, 177, 1916, p.576.

¹⁷⁵ Czitrom, pp.33-35; Kuhn, p.22.

¹⁷⁶ *NZPD*, 177, 1916, p.577.

idea that violent melodramas had a negative impact upon youth behaviour. He suggested that they could have a positive influence:

Let me point out to honourable members the effect, say, the most violent melodrama has upon children. What is the result when the hero comes on? The little fellows and girls kick the floor with delight; and when the villain enters they nearly raise the roof with hoots and howls. Collectively those children were learning the lesson of public life, and learning to approve the good and to abhor the evil in it.¹⁷⁷

However, Payne's valiant effort to defend his industry from external regulation failed to convince his colleagues to oppose the Bill. The Bill easily passed through both parliamentary chambers to become the 1916 Cinematograph-Film Censorship Act.

Despite the passage of the Act, pressure to introduce more restrictive legislation continued well into the 1920s. The efforts of the appointed Censor, William Joliffe, a barrister, failed to satisfy the pro-censorship lobby.¹⁷⁸ After 1916, educationalists took the lead in the campaign to impose tighter controls upon films. In 1920 the New Zealand Educational Institute appointed a committee of five to examine the issue of films and youth. The committee's report recommended stricter film classification, censorship of film advertising, increased involvement of the Education Department in the distribution of children's films and the establishment of a board of censors. The continued agitation resulted in a slight tightening up of the law in 1921.¹⁷⁹ Once again this failed to satisfy the lobbyists and in 1926 Parliament passed an Amendment Act which further clarified and extended film censorship provisions. Two years later the politicians replaced the earlier legislation with a single comprehensive Act, the 1928 Cinematograph Film Censorship Act.¹⁸⁰

¹⁷⁷ *Ibid.*, p.574.

¹⁷⁸ Cutfield, pp.30-35.

¹⁷⁹ *Ibid.*, pp.35-39; Shuker & Openshaw, pp.90-91.

¹⁸⁰ Shuker & Openshaw, pp.95-96; Cutfield, Chapter III.

The 1910s and 1920s campaign to impose ever-stricter censorship upon the film industry echoed earlier attempts to control public access to indecent literature. Censorship advocates emphasised the vulnerability of youth to indecent material and stressed the power of obscene material to corrupt the minds of the young and impressionable. The campaigners, principally middle-class reformers imbued with a strong social purity ethic, sought to impose their values upon wider society through control of popular culture. Whether that culture was expressed in print or film, the middle-class purity lobbyists were determined to impose some limits upon its expression.

V

The extensive changes made to New Zealand's censorship legislation between 1880 and 1925 owed much to the rise of new pressure groups, new values and new technologies. The rise of the medical profession, the social purity movement, the pro-natalists and the educationalists all encouraged the introduction of tighter controls upon 'indecent' or 'obscene' material. Genuine concern over the impact 'immoral' literature, pictures or films might have upon the vulnerable young and the gullible or undiscerning public underpinned attempts to tighten New Zealand's censorship laws. However, personal, professional and class interests also motivated the various lobbyists. While they were genuinely concerned for the welfare of the wider public, doctors and educationalists were also motivated by professional interests and a desire to be acknowledged as the experts in their fields. Middle-class social purity reformers' wish to protect the public from themselves similarly owed much to a desire to impose their own ethic upon the masses. The interests of these groups often converged, with doctors and educationalists drawing upon social purity discourse to defend their stance on indecent advertisements and immoral film content.

The rise of new ideas - including the beliefs that worry over masturbation was as dangerous as the practice itself and that the decline of the birth rate seriously undermined the nation - also contributed to the extension of New Zealand's censorship law. Growing acceptance of the state's right to intervene in individuals' personal lives on the grounds of public health or the public good similarly facilitated increased censorship of printed and filmed material. However, continued belief in individuals' freedom of action and in the fundamental sanctity of the home at times impeded new initiatives. While pro-natalist politicians displayed great willingness to restrict public access to birth control information, they and their colleagues balked at imposing a complete ban on the sale of preventives. Acceptance of the right of the individual to seek treatment from the healer of his or her choice similarly hampered regular doctors' attempts to use censorship legislation to restrict the activities of their competitors.

The rise of perceived new 'threats' underpinned the late nineteenth and early twentieth-century censorship boom. Increased literacy, mass production of goods and printed material, mass advertising, increased consumption, the rise of the new 'sex' novel and the arrival of the cinema all led to fears that the public were being bombarded by a range of unwholesome influences. The spread of new mediums for the dissemination of 'immoral' ideas, values and practices, together with the growth of new audiences, encouraged special interest groups - doctors, purity reformers, pro-natalists, religious bodies and educationalists - to demand more restrictive censorship legislation.

Increased state regulation of printed and filmed material between the 1880s and 1920s resulted from a convergence of interests. Shared fears over the impact that 'immoral' or 'obscene' material might have upon the vulnerable masses encouraged doctors, purity reformers, pro-natalists, religious organisations, feminists and educationalists to support the introduction of

more restrictive legislation. At times working together, and at times working independently, the various lobby groups succeeded in refashioning New Zealand's censorship laws.

CHAPTER V

PRINCIPLES AND PRAGMATISM

PROSTITUTION AND VENEREAL DISEASE

'I am not the Minister of Morals,' declared George Russell during a debate on prostitution in 1916, 'but the Minister of Health'.¹ Russell's attempt to distinguish between health and morality indicates the dilemma faced by all politicians who sought to legislate in this area during the late nineteenth and early twentieth centuries. Prostitution, perhaps more so than any other sexual issue, combined questions of morality with physical health concerns.

Health and sexuality had carried a weight of moral and religious meanings for many centuries. During the eighteenth century it was widely believed that the natural and the moral law were one and the same thing. Good health depended on the observance of natural laws. Transgression of these laws, for example, by overeating, drunkenness or promiscuity, led to disorder or 'moral chaos, signaled by vomiting, sweating or diarrhoea ... Sickness could thus be a sign of sin'.² Belief that disease and individual sickness were linked to personal failings persisted well into the nineteenth and twentieth centuries.³ The practice of viewing disease as a

¹ *NZPD*, 177, 1916, p.212. George Warren Russell (1854-1937), MHR for Riccarton during the 1890s and for Avon 1908 to 1919, was born in England, the son of a bricklayer/builder. A journalist, newspaper proprietor and an ex-Wesleyan Methodist, Russell married twice. He fathered seven daughters and six sons during his first marriage: *DNZB*, Vol.II, pp.432-434.

² Christopher Lawrence, *Medicine in the Making of Modern Britain, 1700-1920* (London & New York: Routledge, 1994), p.12.

³ Tuberculosis, for example, was considered an affliction of 'the reckless and sensual': the result of excess passion. In more recent years, commentators have attributed cancer to a repressed and inhibited personality. See Susan Sontag, *Illness as Metaphor* (London: Penguin, 1978), p.25.

metaphor for vice had a particular resonance for sexual ailments.⁴ Nineteenth-century commentators invariably linked the spread of venereal disease to prostitution.⁵ Many considered venereal disease the just affliction of those who wilfully and recklessly violated the dominant moral code. Such attitudes imposed a particularly heavy stigma upon already shamed sufferers.⁶ This linking of health with morality had major implications for reform and revision of New Zealand's prostitution laws between 1880 and 1925.

Mid-nineteenth century middle-class anxieties over social order contributed to an intense demonising of venereal disease during the late 1800s. Venereal disease became 'a symbol for corruption and contamination, ... a sign of deep-seated sexual disorder, [and] a literalization of what was perceived to be a decaying social order'.⁷ Better medical understanding of venereal disease intensified existing fears. From the 1850s, research revealed that syphilis lay at the root of many serious ailments. By the 1870s doctors had identified syphilis as a cause of

⁴ See Richard Davenport-Hines, *Sex, Death and Punishment: Attitudes to Sex and Sexuality in Britain Since the Renaissance* (London: Collins, 1990), *passim*, for a comprehensive discussion of the persistent links made between sexual diseases and vice.

⁵ Historical studies of venereal disease in New Zealand provide a valuable wider context for the study of prostitution in the colony. See Philip Fleming, 'Shadow over New Zealand': The Response to Venereal Disease in New Zealand 1910-1945' (PhD Thesis, Massey University, 1989) and 'Fighting the "Red Plague": Observations on the Response to Venereal Disease in New Zealand 1910-1945', *NZJH* 22:1 (April 1988); Jane Tolerton, *Ettie: A Life of Ettie Rout* (Auckland: Penguin Books, 1992); and K.V. Parcell, 'The 1922 Committee of Inquiry into Venereal Diseases in New Zealand' (M.A. Research Essay, University of Auckland, 1990).

⁶ Allan Brandt, *No Magic Bullet: A Social History of Venereal Disease in the United States Since 1880* (New York: Oxford University Press, 1985), p.5; Davenport-Hines, p.165. The WCTU subscribed to this belief, maintaining that 'what was morally wrong could not be physically right': *White Ribbon*, 1:8 (February 1896), p.1.

⁷ Brandt, p.5.

inflammation of the of the lymphatic and other glands, rheumatic inflammation of joints such as knees and ankles, or of the eyes; inflammation and suppuration of the eye's mucous membranes leading to blindness; inflammation of the bladder or kidneys; or urethral obstructions; and sundry other types of ulceration.⁸

If the disease affected the spinal cord, sufferers also faced loss of muscular coordination, partial or complete paralysis, and ultimately, insanity.⁹ Doctors had little in the way of effective therapies to counter venereal disease. Treatment often caused more damage than the disease itself. The use of mercury and iodides of potassium could lead to 'loss of teeth, tongue fissures, and haemorrhaging of the bowel'.¹⁰ Most significantly, researchers discovered that infected parents could produce diseased children. Syphilis, it was argued, could be carried down into the third and even fourth generations of families.¹¹ The realisation that syphilis and gonorrhoea could afflict even the 'innocent' heightened the already intense emotions provoked by the subject.

Well aware of the serious health problems associated with venereal disease, many politicians attempted to construct prostitution, the perceived mechanism of spread, as a question of public health rather than a question of morality. However, they could not ignore the moral dimension. Prostitution had a special moral significance for the women's and social purity movements of the period. Politicians could not afford to ignore reformers' insistence that solutions to the health and order problems posed by prostitution address moral concerns. Russell and his predecessors faced a delicate balancing act in confronting 'the Social Evil'. However much they might wish to display hard-headed 'pragmatism' in dealing with the ills of

⁸ Davenport-Hines, p.192.

⁹ Brandt, p.9.

¹⁰ *Ibid.*, p.12.

¹¹ *NZPD*, 57, 1887, pp.114, 116, 118, 119.

prostitution, they could not avoid paying lip service at least to the 'sentiment' displayed by the purity lobby. Politicians' own moral beliefs also shaped their attitudes to prostitution and venereal diseases, and deeply-held moral beliefs could only too easily colour attitudes to a public health issue so closely associated with 'vice'.

The legislative story of prostitution in New Zealand between 1880 and 1925 is largely an account of shifting and contested definitions of 'pragmatism' and 'sentiment'. Different ideologies provided differing perspectives on proposed measures to deal with the twin evils of prostitution and venereal disease. Belief in human perfectability encouraged late nineteenth-century feminists to demand the abolition of the sex-trade. Less optimistic commentators, confirmed in the belief that prostitution could never be eliminated, promoted government regulation of the trade. What was pragmatic for one belief system constituted 'foolish sentiment' in the eyes of another.

More has been written on prostitution than on any other aspect of New Zealand's history of sexuality. C.A. Mairs first addressed the question in some depth in a 1973 M.A. thesis on the infamous Contagious Diseases Act of 1869.¹² During the early 1980s Robyn Anderson and Jan Robinson explored the place of prostitution in the wider context of nineteenth century female criminality.¹³ In 1984 Stevan Eldred-Grigg provided a general overview of prostitution from

¹² A rather lightweight work, Mairs' essay focuses upon events in Auckland: C.A. Mairs, 'The Contagious Diseases Acts: An Examination of the Reasons for and Opposition toward Implementation of these Acts in England and New Zealand' (B.A. (Hons.) Research Essay, University of Auckland, 1973).

¹³ Robyn Anderson, '"The Hardened Frail Ones": Women and Crime in Auckland, 1845-70' (M.A. Thesis, University of Auckland, 1981). Jan Robinson, 'Of Diverse Persons, Men, Women, and Whores: Women and Crime in Nineteenth-century Canterbury' (M.A. Thesis, University of Canterbury, 1983) and 'Canterbury's Rowdy Women: Whores, Madonnas and Female Criminality', *NZ Women's Studies Journal* 1:1 (August 1984).

the early colonial period to 1915 in his book *Pleasures of the Flesh*.¹⁴ In 1986 Charlotte Macdonald provided a more sophisticated and rigorous account of the Contagious Diseases Act in a chapter in *Women in History*, arguing that the Contagious Diseases Act was introduced as a social control rather than a public health measure.¹⁵ Margaret Tennant and Sarah Dalton similarly placed prostitution in the context of women's history in their studies of nineteenth century reform organisations' responses to prostitution.¹⁶ Tennant's 1992 chapter in *Women in History II* focused upon refuges for fallen women and argued that strong social control imperatives also underpinned middle-class women's attempts to 'reform' prostitutes.¹⁷ Dalton's study of the Women's Christian Temperance Union concentrated upon feminists' attempts to have the invasive Contagious Diseases Act repealed and to shape new legislative initiatives.¹⁸ More recently, Dairne Grant and Bronwyn Dalley have brought detailed study of prostitution into the early twentieth century. Dalton's study of prostitution during the First World War and Dalley's work on one-woman brothels between 1908 and 1916 have considerably broadened the

¹⁴ Stevan Eldred-Grigg, *Pleasures of the Flesh: Sex and Drugs in Colonial New Zealand 1840-1915* (Wellington: A.H. & A.W. Reed, 1984). Heather Lucas' 1985 research essay on the lives of prostitutes in Dunedin in the 1880s provides a useful supplement to Eldred-Grigg's work: Lucas, '"Square Girls": Prostitutes and Prostitution in Dunedin in the 1880s' (B.A. (Hons.) Research Essay, University of Otago, 1985).

¹⁵ Charlotte Macdonald, 'The "Social Evil": Prostitution and the Passage of the Contagious Diseases Act (1869)', in B. Brookes *et al* (eds), *Women in History: Essays on European Women in New Zealand* (Wellington: Allen & Unwin/Port Nicholson Press, 1986), p.26. See also Macdonald, *A Woman of Good Character: Single Women as Immigrant Settlers in Nineteenth-century New Zealand*, Chapter VII (Wellington: Bridget Williams Books/Historical Branch, 1990).

¹⁶ Margaret Tennant, '"Magdalens and Moral Imbeciles": Women's Homes in Nineteenth Century New Zealand' in B. Brookes *et al* (eds), *Women in History 2: Essays on Women in New Zealand* (Wellington: Bridget Williams Books, 1992). Sarah Dalton, 'The Pure in Heart: The New Zealand Women's Christian Temperance Union and Social Purity, 1885-1930', Chapter II (M.A. Thesis, Victoria University of Wellington, 1993).

¹⁷ Tennant, p.72.

¹⁸ Dalton, Chapters II & III.

historiography of prostitution in New Zealand.¹⁹ However, studies of prostitution in New Zealand have tended to focus upon prostitution at the 'ground level' or, if they have addressed legislative developments, have focused upon either nineteenth or twentieth-century contexts. This chapter seeks to augment earlier studies by examining continuity and change in political and social attitudes to prostitution and venereal disease from the 1880s until 1925. In particular it seeks to explore the connections made between health and morality.

I

The controversial Contagious Diseases Act of 1869 generated the bulk of parliamentary debate on prostitution during the latter decades of the nineteenth century. The Act, ostensibly a means of combatting venereal disease, empowered the police to order the compulsory genital examination of any woman believed to be a 'common prostitute'. Women detained under the Act faced regular medical examinations for a period of one year.²⁰ A woman diagnosed by the police surgeon as suffering from venereal disease would be confined to a 'lock' hospital ward or jail until treated and cleared of the disease.²¹ Once 'clean' she could go about her business although she was likely to have to repeat the process of examination, and if necessary, treatment. Significantly, the law did not apply to the prostitutes' clients. Nor did it automatically apply throughout the colony. The provincial governments, not the central

¹⁹ Dairne Grant, '"Beyond the Pale": Prostitution in New Zealand during World War I' (B.A. (Hons.) Research Essay, University of Otago, 1993). Bronwyn Dalley, 'Lolly Shops "of the Red-light Kind" and "Soldiers of the King": Suppressing One-Woman Brothels in New Zealand, 1908-1916', *NZJH* 30:1 (April 1996). Philip Fleming's studies of venereal disease in New Zealand between 1910 and 1945, *op cit*, also provide insights into twentieth-century prostitution.

²⁰ Andrée Lévesque, 'Prescribers and Rebels: Attitudes to European Women's Sexuality in New Zealand, 1860-1916', in B. Brookes *et al* (eds.) *Women in History: Essays on European Women in New Zealand* (Wellington: Allen & Unwin/Port Nicholson Press, 1986) p.9.

²¹ Macdonald, 'The Social Evil', p.13.

government, determined whether the Act would be implemented in their districts. Ultimately, only Canterbury and Auckland made use of the legislation. Canterbury invoked the Act in 1872 but revoked it in 1885. Auckland authorities first implemented the Act in 1882 but failed to enforce it after 1886.²² The cost of enforcement, together with popular opposition to the Act, discouraged widespread or continued use of the legislation.²³ In total, the police apprehended 225 women under the Act, of whom the courts convicted 197.²⁴

The New Zealand Government introduced the Act during a time of rising international concern over the ravages of venereal disease. In Europe and England the impact of syphilis upon the armed forces caused particular alarm. Pressure to extend regulatory measures to civilian areas frequently followed action initially restricted to military centres.²⁵ Civic authorities in continental Europe were the first to act. Starting in the late 1790s, officials in Paris and Berlin attempted to impose strict registration and medical inspection schemes on prostitutes.²⁶ In 1864 British officials introduced a system of compulsory medical examination of prostitutes in India. New Zealand's legislators based their Act on legislation introduced in England in the 1860s to limit the spread of venereal disease among soldiers in garrison towns and ports.²⁷ Although William Fox, the New Zealand Premier, remarked in 1869 that Maori

²² Macdonald, *A Woman of Good Character*, p.187.

²³ Mairs, pp.45-46, 49-50.

²⁴ Macdonald, 'The Social Evil', p.23.

²⁵ Judith Walkowitz, *Prostitution and Victorian Society: Women, Class and the State* (Cambridge: Cambridge University Press, 1980), pp.48-50, 71-79; Vern Bullough & Bonnie Bullough, *Women and Prostitution: A Social History* (Buffalo, New York: Prometheus Books, 1987), pp.190, 222-23; Davenport-Hines, pp.166-174.

²⁶ Bullough & Bullough, pp.188-194.

²⁷ For discussion of the English Contagious Diseases Acts see Walkowitz, *passim*; F.B. Smith, 'The Contagious Diseases Acts Reconsidered', *Social History of Medicine* 3:2 (August 1990) and '"Unprincipled Expediency": A Comment on Deborah Dunsford's Paper', *Social History of Medicine* 5:3 (December 1992); Deborah Dunsford, 'Principle versus Expediency: A Rejoinder to F.B. Smith', *Social History of Medicine* 5:3 (December 1992); Susan Kingsley

were 'almost universally affected' by venereal disease, the colonial Act was primarily introduced to control prostitutes in European-dominated towns rather than in rural areas where most Maori lived.²⁸ Queensland, New South Wales and Tasmania also enacted Contagious Diseases Acts during the 1860s and 1870s.²⁹ The American city of Saint Louis followed suit in 1870.³⁰

The rise of the nineteenth-century public health movement greatly facilitated the development of contagious diseases laws. Earlier public health initiatives, such as the introduction of compulsory smallpox vaccination in England in 1853, paved for the way for the more invasive Contagious Diseases Acts.³¹ Supporters of the legislation argued that just as the state acted to protect the population from smallpox or typhus, it should intervene to protect society from the ravages of venereal disease. Regulationists claimed that simple moral suasion had proved ineffective in combatting prostitution. A more scientific approach was required. Official sanitary regulation based upon sound medical practice would do far more to restrict the spread of disease than the simple moral intervention favoured by philanthropists and clergymen.³²

Kent, *Sex and Suffrage 1860-1914*, Chapter II (London: Routledge, 1990); Davenport-Hines, Chapter V.

²⁸ Fox cited in Macdonald, 'Social Evil', pp.21-22.

²⁹ Kay Daniels (ed.), *So Much Hard Work: Women and Prostitution in Australian History* (Sydney: Fontana/Collins, 1984), pp.23, 141; Anne Summers, *Damned Whores and God's Police: The Colonization of Women in Australia* (Victoria: Penguin Books, 1975), p.364.

³⁰ Bullough & Bullough, p.223. Although several other American cities seriously considered medical inspection schemes Saint Louis was the only one to take action in this way. For further discussion of the debates over regulation of prostitution in the United States see M.T. Connolly, *The Response to Prostitution in the Progressive Era* (The University of North Carolina Press/Chapel Hill, 1980), pp.5, 81-88; John D'Emilio & Estelle Freedman, *Intimate Matters: A History of Sexuality in America* (New York: Harper & Row, 1989), pp.148-150; and Leslie Fishbein, 'Harlot or Heroine?: Changing Views of Prostitution, 1870-1920', *The Historian* 43:1 (November 1980).

³¹ Bullough & Bullough, p.233; Walkowitz, p.71.

³² Frank Mort, *Dangerous Sexualities: Medico-Moral Politics in England Since 1830* (London: Routledge and Kegan Paul, 1987), pp.70-71; Walkowitz, p.71.

Although medical and sanitary motives underpinned contagious diseases legislation, social control objectives were also highly significant.³³ Studies of the New Zealand Act have revealed that its supporters valued the Act as much for its potential for maintaining public order as for its likely impact upon the spread of venereal disease.³⁴ Canterbury Superintendent William Rolleston, the architect of the Contagious Diseases Act, emphasised this point during debate over its possible repeal in 1887.³⁵ In Christchurch, he declared, the Act had proved most valuable in 'the restraining effect it had when enforced upon the young population of town and district. There is no doubt', he continued, 'that the effect of the Act being enforced was to preserve modesty and decency in the public streets, and to prevent the spread of the social evil'.³⁶

The 1869 Contagious Diseases Act was just one of a number of laws used to impose a semblance of order upon colonial prostitution. Unruly or overly blatant prostitutes were, in fact, more likely to be prosecuted under vagrancy legislation or the 1884 Police Offences Act.³⁷ Prostitution itself was not illegal. Legislators had long operated under the assumption that the sex-trade could not be eradicated and that it was, in any case, a necessary evil. The most that

³³ *Ibid.*

³⁴ Macdonald, 'The Social Evil', pp.19, 26; Jan Robinson, 'Canterbury's Rowdy Women', p.15.

³⁵ William Rolleston (1831-1903), 'a cultured English gentleman', was considered a model provincial Superintendent. Rolleston served as Superintendent of Canterbury between 1868 and 1876 and variously represented Avon, Geraldine, Halswell and Riccarton in the House of Representatives from 1868 to 1899. The son of an evangelical vicar, he married the strong-willed Mary Brittan (an opponent of women's suffrage) with whom he had four daughters and five sons: *DNZB*, Vol.I, pp.371-74.

³⁶ *NZPD*, 57, 1887, p.115.

³⁷ Robinson, 'Diverse Persons', p.249. Under the Police Offences Act prostitutes could be arrested for 'importuning' or 'being riotous'. Other public nuisance provisions in the legislation - including drunkenness, indecency and vagrancy - could also be used to target prostitutes.

could be done was to contain and regulate the trade. Prostitution legislation simply served to modify the more obvious or offensive manifestations of the trade.³⁸

Despite its relatively limited use, the Contagious Diseases Act became the subject of a major repeal campaign in New Zealand during the 1880s. The English Contagious Diseases Acts had encountered strong opposition since their inception in the late 1860s.³⁹ However, it was not until Auckland authorities implemented the Act in 1882 that serious opposition to the legislation began to be felt in the colony. The application of the Act in Auckland provoked a sharp response from the city's emergent social purity and women's movements.⁴⁰ Drawing on repeal arguments current in England, opponents of the Act argued that such regulation was immoral, that it violated the rights of women and that it failed to prevent the spread of venereal disease.⁴¹ Disregarded by the authorities, Auckland reformers formed a Social Purity Society in 1885 to promote the repeal of the Act.⁴² The following year the newly formed Women's Christian Temperance Union issued the first of a long series of protests against the legislation.⁴³

Feminists and social purity reformers in England and New Zealand rejected regulationists' acceptance of prostitution as a 'necessary evil'. They argued that prostitution should not be condoned through regulation. Rather, it should be eliminated through men's adherence to the same standards of chastity demanded of women.⁴⁴ The reformers opposed the

³⁸ Robinson, 'Canterbury's Rowdy Women', p.14.

³⁹ See Walkowitz, Chapter V.

⁴⁰ Mairs, pp.45-50; Macdonald, 'The Social Evil', p.28.

⁴¹ The English Contagious Diseases Acts encountered fierce opposition from the late 1860s. See Walkowitz, Chapters V, VII & XII, regarding the English repeal campaign.

⁴² Macdonald, 'The Social Evil', p.28.

⁴³ WCTU Minutes, National Convention, 1886, p.14 (MS Papers 79-057-09/12, ATL). The WCTU passed annual resolutions demanding the repeal of the Contagious Diseases Act before it was finally abolished in 1910. Parliament received thirty petitions requesting repeal of the Act between 1889 and 1910. Most were headed by women: Public Petitions, *AJHR*, 1889-1910.

⁴⁴ *White Ribbon* 4:38 (August 1898), p.8.

widespread view that men experienced a natural and uncontrollable sex drive requiring an outlet in prostitution. Men, they argued, could and should control their sexual urges. Flawed social rules, not biology, lay behind the traditional tolerance of male sexual licence.⁴⁵

The feminists similarly rejected society's division of women into the two opposed categories of pure wives and mothers and debased and degraded prostitutes. It was society's toleration of male lust, they argued, which forced this division upon women. Acceptance of an uncontrolled male sex drive required the sacrifice of some women so that others might remain pure.⁴⁶ The solution to prostitution and disease lay not in the state regulation of vice through the Contagious Diseases Acts, but in male sexual self-control.

Feminists considered the genital examination of women under the Acts particularly offensive. In England, repealers labelled the use of the speculum in the medical inspections of women 'instrumental rape'.⁴⁷ Such inspections, they argued, violated the civil rights, personal dignity and bodily integrity of women.⁴⁸ Regular genital examinations could only result in the further degradation of women already demoralised by their trade.⁴⁹ Opponents of the legislation also criticised the Acts' potential for administrative abuse. It was all too likely, they argued, that 'innocent' women and girls might be mistakenly apprehended under the Acts with tragic consequences for their reputations. Although working-class women whose business required

⁴⁵ *White Ribbon* 1:69 (March 1896), p.3; Kent, p.71.

⁴⁶ Kent, pp.60, 68. See also Summers, pp.364-65.

⁴⁷ Ornella Moscucci, *The Science of Woman: Gynaecology and Gender in England, 1800-1929* (Cambridge: Cambridge University Press, 1990), p.123. See pp.112-127 for a detailed discussion of contemporary attitudes to use of the speculum.

⁴⁸ British Committee for the Abolition of State Regulation of Vice, *Appeal to the Members of the New Zealand Legislature* (London, 1895) (NA).

⁴⁹ F.B. Smith, 'The Contagious Diseases Acts Reconsidered', p.198.

them to go out at night were particularly vulnerable to false arrest, reformers argued that the legislation endangered the liberty of all women.⁵⁰

The failure of the legislation to target men as well as women infuriated reformers. Why, they demanded to know, should one sex only be blamed and punished for engaging in vice? Reformers condemned the sexual double standard inherent in the Act on two grounds. Firstly, it was fundamentally unjust that women alone be penalised for vice involving both sexes. A single standard of morality should apply to all. Secondly, such one-sidedness undermined the public health objectives of the legislation. Removing diseased prostitutes from circulation would not prevent the spread of venereal disease while men remained at liberty to infect other women.⁵¹

Reformers argued that state regulation of prostitution would tend to an increase, not a decrease in immorality. They believed that Contagious Diseases legislation provided men with a false sense of security about the risks of consorting with prostitutes. Thinking themselves less likely to catch disease, men were more likely to make use of prostitutes. However, vice could not be made safe by regulation, particularly when one party to the act was not subject to inspection and treatment.⁵²

Feminist and social purity reformers also argued that vice should not be made safe. The strong element of religious belief which underpinned nineteenth-century feminism supported the traditional linking of sickness with sin. The New Zealand Women's Christian Temperance Union argued that what was 'morally wrong could not be physically right'.⁵³ To make vice safe

⁵⁰ *White Ribbon* 2:13 (July 1896), p.7. British Committee, *Appeal*.

⁵¹ *White Ribbon* 1:8 (February 1896), p.1.

⁵² *Ibid.* See also British Committee, *Appeal*.

⁵³ *White Ribbon* 1:8 (February 1896), p.1, and 3:29 (November 1897), p.7.

was to interfere with a divine punishment. The feminists refused to accept regulationists' narrow sanitary approach. They insisted that efforts to combat venereal disease incorporate moral imperatives. Feminist and social purity reformers argued that inculcating higher standards of morality in the population would prove far more effective in combatting disease than would use of the unjust and ineffective Contagious Diseases legislation.⁵⁴

Popular opposition to the implementation of the Act in Auckland during the early 1880s, alongside the suspension of the English Contagious Diseases Acts in 1883 and their final repeal in 1886, encouraged a re-assessment of the New Zealand legislation. In 1883, William Hutchison, MHR for Wellington South, sought leave to introduce a Bill to repeal 'Mr Rolleston's Nasty Act'.⁵⁵ Hutchison, a Scottish liberal, opposed the Contagious Diseases Act on the grounds that it breached principles of liberty, honour and purity. The Act, he declared, violated the rights of women, encouraged 'unsavoury and nasty talk' and had been proven ineffective in combatting venereal disease in England.⁵⁶ After brief debate Hutchison's colleagues rejected his proposal by the large majority of forty-two votes to nineteen.⁵⁷ However, in the following few years members increasingly questioned the cost, effectiveness and operation of the Act.⁵⁸

⁵⁴ The early regulationists did not ignore the moral dimension. They argued that the Contagious Diseases Acts 'would both sanitize and moralize the people': Mort, pp.71-72.

⁵⁵ Hutchison had introduced a Bill in 1882 but this failed to reach a second reading: *Bills Thrown Out*.

⁵⁶ *NZPD*, 44, 1883, pp.455, 458. William Hutchison (1820-1905), a journalist and editor, emigrated to New Zealand in 1866. Hutchison served as MHR for Wellington City 1879-81, Wellington South 1881-84 and Dunedin City 1890-96. A former Mayor of Wellington and an ordained elder of the Presbyterian Church, Hutchison had a particular interest in the welfare of the poor: G.H. Scholefield (ed.), *Dictionary of New Zealand Biography*, Vol. I (Wellington: Department of Internal Affairs, 1940) Scholefield, pp.423-24.

⁵⁷ *NZPD*, 44, 1883, p.45.

⁵⁸ See *NZPD*, 1883, 44, p.617; *NZPD*, 45, 1883, p.355; *NZPD*, 49, 1884, pp.179, 186; *NZPD*, 51, 1885, pp.46, 196-97, 468; *NZPD*, 54, 1886, p.201.

In 1887 former Governor and Premier Sir George Grey succeeded in bringing a repeal Bill to a second reading in the House.⁵⁹ Grey's brief introduction to the Bill simply noted that as both Houses of the British Parliament had seen fit to repeal the English Contagious Diseases Acts, New Zealand's politicians ought to follow suit.⁶⁰ The ensuing debate largely ignored the moral issues raised by the social purity and feminist movements. Supporters and opponents of the Act alike proved more concerned with the effectiveness of the legislation in combatting venereal disease than with questions of morality or women's rights. Sanitary rather than moral considerations drove the debate.

Of the six members who spoke in favour of repeal, only two criticised the impact of the legislation upon women. The general disregard for women's feelings greatly angered James Fulton, MHR for Taieri and husband of ardent feminist Catherine Fulton:⁶¹

I confess I feel I am not fit to speak of this in proper and calm terms; I cannot do it; I feel very strongly, and therefore protest most earnestly against anything that shall for one moment lead to the continuance of that which degrades those unfortunate creatures and prevents them from becoming virtuous, and condemns them with infernal cruelty to a life of infamy.⁶²

However, most of Fulton's colleagues appear to have considered such concerns of little consequence. Arthur Pyne O'Callaghan, an Irish-born Anglican minister, dismissed Fulton's

⁵⁹ Grey introduced a repeal Bill in 1886 but this failed to reach the stage of a second reading: *Bills Thrown Out*, 1886.

⁶⁰ *NZPD*, 57, 1887, p.114.

⁶¹ James Fulton (1830-1891), member for Taieri 1879-90 and Legislative Councillor 1891, actively supported his wife's feminist views and was an advocate of women's suffrage and temperance. Leading members of the West Taieri Presbyterian congregation, the Fultons exhibited deep concern for the moral and social welfare of young people. Catherine Fulton was a founding member of the Dunedin branch of the WCTU and became its first president: *DNZB*, Vol.I, pp.140-141.

⁶² *NZPD*, 57, 1877, p.119. Dr Alfred Kingcombe Newman (1849-1924), member for Thorndon, also noted (briefly) the Act's negative consequences for women, p.117. Dr Newman was also sympathetic to the women's and temperance movements.

speech as mere sentiment.⁶³ Many New Zealand politicians rejected the notion that 'fallen women' possessed the finer feelings and sensibilities of 'pure' women. They continued to categorise women as either 'damned whores' or 'God's police'.⁶⁴ 'What is the outrage', asked John Holmes,

to a class of women who have fallen from the high state of womanhood, have fallen to be degraded outcasts, and whom nothing in the world can degrade below the position they occupy when they once come to be known by a term that, out of courtesy to the House, I will not use? ... nothing which is done by [the police and medical men] can possibly degrade, or hurt, or insult, or in any way wound the feelings of the class of which we speak.⁶⁵

Fulton's fellow repealers, perhaps aware that chivalric appeals to consider women's sensibilities would fall on deaf ears, focused their criticism on the effectiveness of the legislation as a public health measure.

Political opposition to repeal of the Act did not equate to full support for the existing legislation. The majority of those who spoke out against repeal suggested that the legislation should be extended, amended or retained until something better could take its place. Several politicians, including Messrs O'Callaghan and Holmes, argued that rather than repeal the legislation, the legislature should immediately enforce it in all the major towns of the colony.⁶⁶ Others acknowledged that the Act's failure to target men as well as women hindered its effectiveness and even proposed that it be amended to include men who visited prostitutes.⁶⁷

⁶³ O'Callaghan (1837-1940) was the member for Lincoln (1881-88).

⁶⁴ On this stereotyping see Summers, pp.152-55, Chapters VIII & IX.

⁶⁵ *NZPD*, 57, 1877, pp.119-120. Holmes (1831-1910) was MHR for Christchurch South 1881-1887.

⁶⁶ The supporters of extension included William Montgomery (Akaroa), James Parker Joyce (Awarua), George Fisher (Wellington South), Arthur O'Callaghan and John Holmes:*Ibid.*, pp.116-120.

⁶⁷ Richard Hobbs, member for the Bay of Islands, noted the unlikelihood of this ever happening. Only the previous year, he reminded his colleagues, a majority of members had

However, those who supported the extension of the Act to cover men justified their stance on practical grounds to do with disease control rather than upon a moral rejection of the sexual double standard.⁶⁸ In the end, fifty-six of the seventy-one members present voted against repeal of the Act.⁶⁹ A majority of members evidently accepted that the legislation was working or that it should remain available to local authorities until more effective legislation could be introduced.

Politicians debated the merits of the Contagious Diseases Act within a climate of fear over the dangerous implications of allowing venereal disease to go unchecked. Although one member of the House, Dr A.K. Newman, denied that syphilis was sufficiently virulent or prevalent in the colony to warrant the Act's existence, most of his colleagues clearly disagreed with him. John Holmes no doubt articulated the feelings of many when he rejected Newman's comments:

for any one, especially a medical man, to deny that these effects [transmission into the fourth generation] do constantly occur from a particular form of that disease is to tell honourable members - who have possibly read as much on the subject as he has - is to tell us what we cannot possibly believe, and what is absolutely contradicted by heaps and heaps of facts that can be found in medical books, to be found in the parliamentary library or in any medical library.⁷⁰

The politicians of the 1880s lacked reliable statistics on the extent of venereal disease in the colony. These diseases were not notifiable, and in any case, the stigma associated with them frequently discouraged sufferers from seeking help from doctors and hospitals. Venereal disease sufferers were far more likely to turn to self-help remedies, to less judgmental chemists

blocked the passage of legislation intended to deal with men who frequented brothels: *NZPD*, 87, 1887, p.116. Hobbs was referring to the 1886 Police Offences Bill.

⁶⁸ Rolleston, Robert Stout (Dunedin East), Joyce, Fisher and Holmes all proposed extending the legislation to cover men: *NZPD*, 57, 1877, pp. 114-120.

⁶⁹ *Ibid.*, pp.120-21.

⁷⁰ *Ibid.*, p.119.

or to quacks who could provide relatively anonymous treatment through the mail.⁷¹ Nevertheless, despite the lack of statistical evidence, most politicians clearly considered venereal disease a very real and serious threat. Consequently, although the Contagious Diseases Act might be imperfect, most felt it ought not be jettisoned without the introduction of more effective measures. As for the moral objections of the feminist and social purity reformers, the health of the nation took precedence over such 'maudlin sentimentality'.⁷²

George Grey introduced repeal Bills again in 1888 and 1889 but to no avail. The election of the new Liberal Government in 1891 had little immediate effect on the repeal campaign. The government preferred to focus on less controversial anti-'vice' measures. In 1893 it incorporated new penalties for brothel-keepers in the new Criminal Code Act. Anyone who kept 'a common bawdy-house' - defined as any place kept for the purposes of prostitution - would henceforth face two years imprisonment with hard labour.⁷³ The Government's reluctance to repeal the Contagious Diseases Act may have been influenced by continued support of the legislation by organised doctors. Members of the New Zealand Medical Association expressed their support for the Act on several occasions during the early 1890s. In 1890 the Canterbury branch of the Association noted that public health had suffered since the

⁷¹ Macdonald, 'The Social Evil', p.28. J.F. Neil, author of *The New Zealand Family Herb Doctor* (Dunedin, 1889), included a remedy for secondary syphilis in his book. The ingredients consisted of four ounces of Prickly Ash Bark, two ounces of Sarsaparilla Root (Jamaica), one ounce of English Rhubarb Root and one ounce of the root of Soapwort. The book also declared that Neil could provide a 'sure cure' for gonorrhoea for five shillings. Although he moralised that gonorrhoea was 'generally the result of wrongdoing', Neil noted that it did need to be cured: pp.474, 481, 512 (ATL).

⁷² *NZPD*, 57, 1887, p.116.

⁷³ Criminal Code Act, *NZ Statutes*, 1893, Part XIV, s.143 (1) and s. 144.

Act had become inoperative. The Wellington branch agreed and proposed that the Act be brought into force throughout the colony in order to check the spread of venereal disease.⁷⁴

It was not until 1895 that the Contagious Diseases Act again received serious attention from the House of Representatives.⁷⁵ Almost a decade had passed since the Act had last been enforced. Despite the Medical Association's continued support for the legislation, public opposition to the Act - whether based on moral principles or a reluctance to pay for the cost of enforcement - had deterred local authorities from utilising the legislation. Politicians increasingly argued that the Contagious Diseases Act was 'a dead-letter' which should be removed from the statute book.

In 1895, the Liberal Government capitulated to public pressure and introduced a repeal Bill.⁷⁶ The Bill successfully passed through all stages in the House without debate, but failed to gain the assent of the Legislative Council. Undaunted, the Government tried again the following year. This time, three senior Liberals briefly explained their reasons for supporting repeal. The Minister of Justice, William Hall-Jones, introduced the Bill. The Contagious Diseases Act, he declared, was ineffective, unpopular and 'a disgrace to our statute book'.⁷⁷

⁷⁴ *NZMJ*, Vol.III (1890), pp.264-5; *NZMJ* Vol. IV (1890-91), p.191.

⁷⁵ A further Bill also failed in 1890. In 1891, in reply to a question inquiring whether the Government would extend the legislation by applying it to males and enforcing it throughout the colony, Premier John Ballance answered that it had no intention of introducing any legislation on the subject: *NZPD*, 71, 1891, p.415.

⁷⁶ In 1887, before the firm emergence of political parties, future 'Liberals' and 'Conservatives' could be found on both sides of the question. The fifty-six members who voted against repeal in 1887 included fourteen 'Conservatives' and ten 'Liberals'. Advocates of repeal included three 'Conservatives' and the same number of 'Liberals'. The remainder, on both sides, consisted of 'Independents': *NZPD*, 57, 1887, p.120-121. See J.O. Wilson, *NZ Parliamentary Record 1840-1984* (Wellington: Government Printer, 1985), pp.179-247, and David Hamer, *The New Zealand Liberals* (Auckland: Auckland University Press, 1988), pp.361-67 for listings of members' political affiliations.

⁷⁷ *NZPD*, 92, 1896, p.259.

Robert Stout - an opponent of repeal when Premier in 1887 - focused on the inadequacy of the legislation in combatting venereal disease. However, Stout argued that 'merely repealing the Act was not dealing with the subject the way it ought to be dealt with, but was simply pleasing some women who wanted it repealed'. He urged the Government to replace the Act with more effective measures.⁷⁸ Premier Richard Seddon, who had opposed repeal in 1887, also acknowledged the strength of women's opposition to the Act both within and outside the colony. Seddon declared that

there were a large number [of women] in places outside the colony watching their conduct with regard to this measure. By the last mail he had received communications from around the Empire stating that it would very much help to make this commencement.⁷⁹

The Act, Seddon continued, was a dead-letter and 'a blot on the colony'. More effective measures, he hinted, would be included in a Public Health Act currently being prepared.⁸⁰ Once again, the House promptly passed the Bill.

A change of personnel may have contributed to the more reformist atmosphere in the House in the mid-1890s. Only fifteen of the fifty-six members who voted against repeal in 1887 remained in the House in 1895. The new members included a higher proportion of 'self-made men, men with little education from humble backgrounds who by dint of hard work had made it to the top'.⁸¹ Judith Walkowitz' work on the English repeal campaign has shown that the

⁷⁸ *Ibid.*, pp.259-60.

⁷⁹ These included the previously cited *Appeal to the Members of the New Zealand Legislature* (London, 1895) sent by the British Committee for the Abolition of State Regulation of Vice. Josephine Butler, the most prominent of the English CD Act repealers, James Stansfield and three members of the British Parliament sent this document to the New Zealand legislators.

⁸⁰ *NZPD*, 92, 1896, p.260.

⁸¹ David Hamer further describes these politicians as 'men who had 'knocked about' in the world and tried a great diversity of occupations.... the new breed of politician was very self-

working classes and middle classes tended to be less supportive of the Contagious Diseases Act than the gentry. Walkowitz has argued that

Tories and aristocrats ... tended to share a worldly perspective on the necessity of prostitution and male promiscuity. Anglican clergy ... also identified themselves as part of the established corporate interests that supported regulation. Unlike evangelicals and nonconformists, Anglican clergy tended to be more concerned with public order and the control of vice than with its total eradication.⁸²

Jan Robinson has similarly argued that New Zealand's Anglican upper classes were more supportive of the legislation than were the nonconformist middle classes who supported the eradication of prostitution altogether.⁸³ Anglican landowners and clergy and other 'leading men' had largely been responsible for the introduction of the Contagious Diseases Act in 1869.⁸⁴ The 'new breed' of politicians may have had more sympathy for the abolitionist cause than their more 'elite' predecessors had had.

More significantly, the advent of women's suffrage in 1893 encouraged a more sympathetic political climate towards repeal. 'With the female franchise now in force,' remarked a Canterbury doctor in 1895, 'it would be as much as any man's seat in Parliament was worth' to attempt to enforce the legislation.⁸⁵ Elected politicians in the House could not afford to ignore one of the cardinal demands of the women's movement.

The opposition of feminists and social purity reformers to the Act played a major role in turning public and political opinion against the legislation. However, many members of the

consciously and deliberately democratic, priding himself on being merely the servant of the people', pp.195-196.

⁸² In England, middle-class evangelicals and non-conformists together with working-class radicals largely drove the repeal campaign. The regulationist camp included a much higher proportion of Tories, aristocrats and Anglicans: Walkowitz, pp.1, 80.

⁸³ Robinson, 'Of Diverse Persons', pp.253-54.

⁸⁴ Eldred-Grigg, pp.34-35; Macdonald, 'Social Evil', p.19.

⁸⁵ *NZMJ*, Vol.VIII, p.194.

House of Representatives clearly considered practical considerations - the expense of implementation and popular resistance to its use - more important than any moral question. Whether a majority of members of the House finally passed the repeal Bill in 1895 because they were convinced of the moral justice of the cause, or because they considered the Act ineffective, or because they feared women's voting power, is difficult to determine. What can be said is that many elected politicians proved highly resistant to the moral or 'sentimental' arguments of the feminists and social purity advocates for a significant period of time.⁸⁶

The non-elected Legislative Council proved even more resistant to these arguments. Much to the disgust of the Women's Christian Temperance Union, the Council roundly rejected repeal of the Contagious Diseases Act in 1895 and again in 1896.⁸⁷ The pressure of public opinion successfully brought to bear on members of the House had less impact on the Council. Its members, secure in their more extended tenure, had less incentive to accede to the wishes of the voting public. Prior to 1891, Legislative Councillors were appointed for life. In 1891 Parliament reduced tenure to a period of seven years, renewable at the discretion of the Government.⁸⁸ However, Members of the House of Representatives faced national elections every three years. Members' political fortunes were far more dependent upon their ability to respond appropriately to public opinion than were those of their colleagues in the Council.

⁸⁶ Some who proved sympathetic to other feminist goals, such as women's suffrage and equal divorce legislation, proved reluctant to repeal this Act. Future supporters of women's suffrage who opposed repeal of the CD Act in 1887 included Stout, William Montgomery and James Parker Joyce.

⁸⁷ Dalton, p.62.

⁸⁸ By 1895, sixteen of the forty-three-strong Legislative Council had been appointed under the seven-year scheme. The remaining twenty-seven remained life-appointees: W.K. Jackson, *The New Zealand Legislative Council* (Dunedin: University of Otago Press, 1972), p.61.

Legislative Council discussion of the Contagious Diseases Act in the mid-1890s focused on health and social order concerns. Councillors' speeches generally echoed the sentiments expressed in the House of Representatives in 1887: sanitary principles outweighed moral considerations. Council opponents of repeal generally dismissed women's opposition to the Act as immaterial and based on sentiment and ignorance. For the majority of Councillors the issue was more a matter of the Act's effectiveness in reducing both the spread of venereal disease and numbers of prostitutes on the streets than a question of women's bodily integrity and the sexual double standard.

Attorney General Sir Patrick Buckley introduced the second reading of the 1895 repeal bill to the Council. The Act was a 'dead letter', he argued, and its failure to be utilised by local districts justified its repeal. Difficulties in the working of the legislation, the violation of the rights of the individual inherent in it, and public opposition to its enforcement had rendered the Act inoperative.⁸⁹ However, Sir Patrick's colleagues largely ignored his summary of the Government case for repeal. Dr Daniel Pollen spoke next and his forceful views dominated the ensuing debate.⁹⁰ Pollen argued in favour of retention of the Act, declaring that when in force the Act had led to a reduction of 'the evils which it was intended to remedy': prostitution and venereal disease. Pollen accepted prostitution as an unavoidable feature of society. The best that could be done was to minimise its operation and reduce the contribution of the trade to the dissemination of venereal disease. According to Pollen, the Contagious Diseases Act served this function. Summing up his argument, he declared that

⁸⁹ *NZPD*, 88, 1895, p.218.

⁹⁰ Daniel Pollen (1813-96), an Irish-born doctor and coroner based in Auckland, served on the Legislative Council for thirty years (1861-66, 1868-70, 1873-96). A political conservative, heavily involved in local politics, Pollen supported the temperance and women's suffrage movements: *ENZ*, Vol.II, pp.814-15.

Acts of Parliament and all the rest of it would not cure the social evil. The social evil had always been, and would always be ... All that could be done would not eradicate it; but a great deal might be done to obviate the disastrous effects, and to minimise and reduce it to the least possible quantity. There was no stronger measure possible ... than this very Contagious Diseases Act⁹¹

Pollen and many of his colleagues clearly rejected the social purity lobby's optimistic vision of a future where men and women would lead equally chaste and self-controlled lives. Medical rather than moral intervention was the key to combatting the scourge of venereal disease.

The Councillors of the mid-1890s lacked detailed information about the extent of venereal disease in the colony and of the effectiveness of the Contagious Diseases Act in containing it. In the absence of reliable statistics, Councillors tended to rely on anecdotal evidence or references to the state of affairs in Britain to support their arguments. Nevertheless, most believed that the colony required some sort of disease-monitoring check on prostitution. The question was whether the 1869 Contagious Diseases Act was the best remedy for the problem.

Councillors generally considered the supply side of prostitution the essence of the problem. They argued that it was prostitutes, not their clients, who were primarily responsible for the spread of disease. John Rigg forcefully put this point during the 1895 session:

it was not the man who generated these diseases. They were not generated even by the ideal woman, but by the other woman, and they were the outcome of dirty habits and uncleanness.⁹²

Rigg's argument was based upon old ideas about the origins of disease which had yet to be replaced by biomedical theories. Until germ theory displaced traditional views, it was widely

⁹¹ *NZPD*, 88, 1895, p.220.

⁹² *NZPD*, 88, 1895, pp.273-4.

believed that dirty living conditions and 'filthy atmospheres' generated diseases.⁹³ However, most Councillors appeared to support the argument that men were less culpable because they did not 'live by prostitution, and should they become diseased do not spread it in the wholesale manner that women do.'⁹⁴ Prostitutes did, after all, have far more sexual partners than most people. Consequently, many Councillors supported retention of an Act which focused on the activities of prostitutes. However, a few Councillors acknowledged that extending the Contagious Diseases Act to cover men would make it more effective.⁹⁵

Councillors' descriptions of the men who used the services of prostitutes ranged from images of sailors, 'ruthless and reckless' ruffians and 'dirty larrikins', to naive and inexperienced young men 'cursed [with disease] ... not from any result of inherent vice, but simply because of a lack of knowledge of the world'.⁹⁶ Prostitutes' clients thus consisted of men from the 'unrespectable' classes and foolish boys taken advantage of by diseased women and girls. Feminists had a different perspective. They noted that men fully accepted by 'decent' society could bring disease and despair into the family home. Lucy Smith, writing on behalf of the Women's Christian Temperance Union in *The Prohibitionist* in 1895, pointed out the dangers women faced if they married 'impure' men:

⁹³ See Anthony Wohl, *Endangered Lives: Public Health in Victorian Britain* (London: J.M. Dent & Sons Ltd, 1983), pp.285-88; Brandt, p.5.

⁹⁴ From the report of Richmond Beetham, Stipendiary Magistrate (Christchurch) in Prostitution and the Contagious Diseases Act (Reports from Stipendiary Magistrates, Inspectors of Police, and Medical Officers of Hospitals from Evidence Taken by the Young Persons Protection Bill Committee, Confidential to Members of the NZ House of Representatives, Session II, 1897 (ATL), p.5.

⁹⁵ G.S. Whitmore, George McLean, and Charles Bowen all declared that they would not object to legislation which targeted men as well as women: *NZPD*, 88, 1895, pp.220, 276.

⁹⁶ *Ibid.*, pp.218-220, 274; *NZPD*, 152, 1896, pp.405, 415.

In all probability he continues sowing wild oats. Yes, and then too, heredity steps in, and refuses healthy, wholesome-bodied, wholesome-souled offspring to him and his lawful wife ... And so the curse continues.⁹⁷

Until society rejected the sexual double standard which winked at young men 'sowing their wild oats' but which damned women seduced by unfeeling men, venereal disease would continue to ravage the race.

Opponents of repeal in the Council supported the Act for social control as well as disease prevention purposes. They argued that when enforced it served as an effective deterrent to girls and women who might otherwise drift into prostitution. Several Councillors argued that the number of young girls engaged in prostitution had increased markedly since use of the Contagious Diseases Act had ceased. 'Not a day passed', declared Dr Pollen, 'in which a number of girls scarcely in their teens might not be seen consorting with sailors or with low larrikins, and creating a public nuisance in the streets of Auckland'.⁹⁸ Thomas Kelly argued that when the Act had been enforced its effect had been to 'sweep off the streets all children under sixteen years of age, and to relegate the evil to professionals'.⁹⁹ A perceived increase in 'amateur' or casual, part-time prostitution and 'juvenile immorality' seriously concerned Councillors. While it is clear that many were resigned to the inevitability of at least some prostitution, it is also evident that they saw a need to keep the trade restricted to a minimum and to the professionals. The mid-1890s were years of intense public concern over the sexual

⁹⁷ Lucy Smith, *The Prohibitionist*, 26 January 1895, p.3, quoted in Margaret Lovell-Smith (ed.), *The Woman Question: Writings By the Women Who Won the Vote* (Auckland: New Women's Press, 1992), p.177.

⁹⁸ *NZPD*, 88, 1895, p.220.

⁹⁹ *Ibid.*, p.275.

exploitation of young girls.¹⁰⁰ Supporters of the Contagious Diseases Act argued that implementing the legislation would go a long way towards solving the problem of juvenile prostitution.¹⁰¹

The issue of women and girls increasingly entering public space also drew politicians' attention. George McLean linked changing work patterns for women and girls to a rise in immorality.¹⁰² The range of jobs available to women increased significantly during the late nineteenth century. More and more girls began to abandon domestic service for work in factories or offices.¹⁰³ McLean, a staunch supporter of the Contagious Diseases Act who advocated its compulsory nation-wide enforcement, declared that

they saw all the young girls were now determined to go into factories, preferring that to service; they must go to factories, when they could go out in the streets and walk about at night; temptation was put in their way, and the social evil was increased. If this Act was enforced they would be afraid, and would keep off the streets.¹⁰⁴

Dr Pollen also acknowledged changing conditions, but, in contrast to McLean, argued that the new work opportunities reduced the need for women and girls to prostitute themselves to earn a living. With 'so many new openings of employment to women', he remarked, 'so many temptations arising out of want were taken out of their way'.¹⁰⁵ Enforcement of the Contagious Diseases Act, he implied, might encourage prostitutes to take advantage of these new opportunities.

¹⁰⁰ Girls' sexuality came under intense scrutiny during debates over the age of consent between 1894 and 1896. In 1894 Parliament raised the age of consent for girls from fourteen to fifteen. In 1896 it raised the age to sixteen years. See Chapter VI, pp.246-50.

¹⁰¹ *NZPD*, 88, 1895, p.220.

¹⁰² *Ibid.*, p.221.

¹⁰³ Eric Olssen, 'Towards a New Society', in G. Rice (ed.), *The Oxford History of New Zealand* (Auckland: Oxford University Press, 1992), p.265.

¹⁰⁴ *NZPD*, 88, 1895, p.221.

¹⁰⁵ *Ibid.*, p.220.

Members of the Council recognised that women were the principal opponents of the Contagious Diseases Act. Some used this to discredit the repeal campaign. Several supporters of the legislation attacked the credibility of female reformers, labelling them as hysterical, prejudiced and sentimental 'old ladies, who really knew nothing about the question'.¹⁰⁶ John Rigg drew a particularly vivid picture of the sort of woman he believed was behind the repeal campaign:

Mrs Grundy was a terribly proper person. He fancied he saw her there now while he was speaking; a tall, thin woman, with a long nose, very compressed lips, and somewhat flat in the chest.¹⁰⁷

Sir G.S. Whitmore insisted that the women demanding repeal of the Act did not know what they were talking about. 'Most men', he argued, 'at all events, know something of the effects of [syphilis] on human life, and its effects on families.'¹⁰⁸ Women who signed petitions against the Act, he declared, 'were not the persons whose opinions on the subject were worthy of much consideration'.¹⁰⁹

Councillors' attitudes to repeal of the Contagious Diseases Act generally matched their attitudes to women's suffrage. Opponents of repeal were drawn disproportionately from the ranks of those who had opposed women's suffrage in 1893.

¹⁰⁶ *Ibid.*, pp.218-223, 273-276; *NZPD*, 94, 1896, p.527.

¹⁰⁷ *Ibid.*, p.273.

¹⁰⁸ *Ibid.*, p.220.

¹⁰⁹ *NZPD*, 92, 1896, p.322.

Table 1. Legislative Council: CD Act and Suffrage Voting Patterns¹¹⁰

	For repeal	Against repeal
Pro-suffrage	10	8
Anti-suffrage	2	17
Opinion not known	1	2
Total	13	27

Rigg and Whitmore had both voted against women's suffrage. However, eight pro-suffrage Councillors also opposed repeal of the Contagious Diseases Act. Support for women's suffrage did not always translate into support for other feminist goals. Dr Pollen, the most vocal opponent of repeal in 1895, had supported women's suffrage in 1893.

Anti-feminist sentiment played a part in some Councillors' refusal to repeal the Contagious Diseases Act, but other factors were probably more significant. It is possible that political tensions between the House of Representatives and the Council contributed to a lack of support for repeal. Prior to the election of the Liberal Government in 1891, the out-going Premier Harry Atkinson reinforced the Council with his supporters. W.K. Jackson argues that the new government faced a particularly hostile Council. Between 1891 and 1897 the Council rejected an unusually high number of Government Bills, and it was not until 1899 that the Liberals finally gained a firm hold over the upper chamber.¹¹¹ Although Atkinson had declared his opposition to the Act in 1887, the power struggle between the two bodies may have

¹¹⁰ The table includes the forty Councillors who voted on the second readings of the 1895 and 1896 CD Act Repeal Bills. Dr Daniel Pollen did not cast a vote but is included because he stated his position very clearly during debate on the 1895 Bill. See *NZPD*, 88, 1895, p.277 and *NZPD*, 92, 1896, p.325 for the Councillors' votes. See *NZPD*, 82, 1893, pp.80-81, for these Councillors' votes on the Electoral Bill which granted women the franchise.

¹¹¹ Jackson, pp.119-121.

influenced the attitudes of his supporters and other anti-Government Councillors to the repeal Bills of the mid-1890s.¹¹²

Table 2. Council Appointees: CD Act Voting Patterns¹¹³

	For repeal	Against repeal
Pre-1891 appointees	7	17
Atkinson appointees	1	3
Liberal appointees	5	7

However, seven of the eleven Liberal appointees who voted in 1895 and 1896 also opposed repeal of the legislation. Councillors did not necessarily think in gendered terms on this issue. It was one thing to vote for women's suffrage in the interests of moral and social order, but another thing to repeal what was in some minds a practical public health or social order measure.

Attitudes associated with social class may also have contributed to Councillors' reluctance to repeal the legislation. As mentioned earlier, support for Contagious Diseases legislation primarily came from the gentry or landowning elite. Landowners and men of the professional classes dominated the Legislative Council.

¹¹² *NZPD*, 57, 1887, pp.116, 120.

¹¹³ As in the previous table, this table includes the forty Councillors who voted on the second readings of the 1895 and 1896 CD Act Repeal Bills (and Dr Pollen) See *NZPD*, 88, 1895, p.277 and *NZPD*, 92, 1896, p.325 for the Councillors' votes.

Table 3. Councillors' Occupations¹¹⁴

	For repeal	Against repeal
Farming	5	13
Law	2	2
Professional	-	4
Commerce	-	5
Trade	1	1
Journalism	2	1
Working men, trade union officials	3	1

Council opponents of repeal tended to be professionals and landowners. Advocates of repeal were more evenly distributed throughout the different classes represented in the Council. Landowner and professional dominance of the Council may partially explain its reluctance to accept the more democratic lower chamber's decision to repeal the Act.

Political tensions, personal prejudices and genuine concerns over syphilis and juvenile prostitution all contributed to Legislative Council rejection of the Contagious Diseases Act Repeal Bills of 1895 and 1896. Opponents of repeal tended to ignore the fact that no local authority was likely to implement such unpopular legislation. They insisted it be kept on the statute books 'just in case'. Although some acknowledged that the legislation would be more effective if it targeted men as well as women, most rejected repealers' arguments out of hand as foolish female 'sentiment'. Many Councillors accepted traditional patriarchal views of society which considered prostitution inevitable. They could not accept the feminist and social purity

¹¹⁴ The table includes the forty Councillors who voted on the CD Act repeal bills of the mid-1890s (see Appendix II). Councillors' occupations are taken from Jackson, pp.217-25.

argument that prostitution could be eliminated if only men would curb their sexual appetites. The Contagious Diseases Act had been introduced as a public health measure which would also moderate the public behaviour of prostitutes. Its supporters continued to believe it capable of fulfilling these roles. A majority of Councillors refused to acknowledge that the Act's one-sidedness critically undermined its effectiveness as a health measure and rendered it unacceptable to a considerable proportion of the voting public.

Although the Liberal-dominated House of Representatives passed repeal Bills by large majorities during the mid-1890s it appears that the Government did not place a particularly high priority on repeal or reform. Government-sponsored Contagious Diseases Act repeal bills introduced into the House in 1897 and 1898 failed to reach the stage of a second reading. Bills introduced in 1901 and 1903 suffered the same fate. Richard Seddon had opposed repeal of the Act in 1887 and his change of mind appeared somewhat lukewarm in 1896. He had sought, unsuccessfully, to use the hostile Council to stymie women's suffrage in 1893.¹¹⁵ It is possible that he similarly supported repeal of the Contagious Diseases Act in 1895 and 1896 in the expectation that the proposal would be knocked back by the Council. The ensuing years of Government inaction on repeal or reform of the Contagious Diseases Act - even after the Liberals gained control of the Council - certainly indicate that despite continued lobbying by the women's organisations, Seddon and his Ministers considered the question of repeal a low political priority. Political apathy resulted in the legislation lingering on the statute books long after it had ceased to be a viable option for local authorities.¹¹⁶

¹¹⁵ Patricia Grimshaw, *Women's Suffrage in New Zealand*, 1st publ. 1972 (Auckland: Auckland University Press, 2nd ed., 1987), p.92.

¹¹⁶ Dalton, p.61.

The fears expressed in the two parliamentary chambers regarding the prevalence and dangers of venereal disease failed to lead to any significant new legislative initiatives on prostitution in the late 1890s and early 1900s. Amendments made to the Police Offences Act in 1901 and 1908 placed new restrictions on the activities of pimps, procurers and brothel-keepers, but the amendments did not seriously address the links made between the sex trade and venereal disease.¹¹⁷

II

It was not until 1910 that prostitution and venereal disease again became the focus of serious political discussion. In 1910, Attorney-General and Minister of Justice J.G. Findlay, the Government's representative in the Legislative Council, broke the temporary political lull on the subject. Findlay argued that the moribund Contagious Diseases Act needed to be replaced with something more effective and palatable to the general public.¹¹⁸ He urged the Council to support repeal of the Act so that they might 'take some more direct and effective means of checking this black plague'.¹¹⁹

Although Findlay admitted that accurate statistics on the prevalence of venereal disease could not be obtained, he argued that venereal disease was on the increase in New Zealand. As Minister of Justice, he had received reports from prison authorities, police Inspectors and administrators of homes for 'fallen women' which demonstrated a 'shocking and alarming increase of these diseases'. New Zealand's situation was not unique, he argued; similar evils

¹¹⁷ Eldred-Grigg, p.161; Fleming, 'Shadow Over New Zealand', p.31. Detailed discussion of these Acts lies outside the scope of this study.

¹¹⁸ *NZPD*, 153, 1910, pp.405-410.

¹¹⁹ *Ibid.*, p.405.

prevailed in other Anglo-Saxon countries. To illustrate the full horrors of the situation, he quoted from the American *Physical Culture Magazine*:

The best obtainable statistics lead to the conclusion that 80 per cent. of males contract sexual disorder before they are thirty; that various authorities assert that between 65 and 80 per cent. of abdominal and pelvic operations on women are due to the infection that ensues; and that perhaps 30 per cent. of blindness in the new-born is due to the same cause. Finally, that one sixth of the whole population is infected with syphilis either acquired or hereditary.¹²⁰

Similar statistics had been cited the previous year by the eminent Dunedin obstetrician and gynaecologist Dr F.C. Batchelor. Batchelor declared that 'fully fifty per cent. of decent married women who enter the gynaecological ward of the Dunedin Hospital do so as the result of these diseases.'¹²¹

Findlay's desire to replace the old and unusable Contagious Diseases Act took place within an international context of intense anxiety over the dangers posed to national fitness by venereal diseases.¹²² Doctors throughout the western world had become increasingly concerned about the impact of syphilis and gonorrhoea upon birth rates and national health. International conferences on venereal disease took place in Brussels in 1899 and 1902.¹²³ American medical literature indicated that many doctors in the United States believed that nation was suffering from 'a venereal epidemic'.¹²⁴ Closer to home, the 1908 Australasian Medical Congress issued a warning on the need for action against venereal disease. Syphilis, the Congress resolved, 'is

¹²⁰ *Ibid.*, pp.405-406.

¹²¹ F.C. Batchelor, *Society for the Promotion of the Health of Women and Children, Addresses delivered by Drs F.C. Batchelor and Truby King* (Dunedin, 1909), p.8.

¹²² Carol Bacchi, 'Evolution, Eugenics and Women: The Impact of Scientific Attitudes Towards Women, 1870-1920', in E. Windshuttle (ed.), *Women, Class and History* (Sydney: Fontana/Collins, 1980), pp.133, 136.

¹²³ Davenport-Hines, p.211. See also Chapter IV, pp.144-46.

¹²⁴ Brandt, p.13.

responsible for an enormous amount of damage to mankind, and ... preventive or remedial measures directed against it are worth the utmost consideration.¹²⁵

Debate on the 1910 Contagious Diseases Act Repeal Bill in both parliamentary chambers revealed a new emphasis on the impact of venereal disease on women and children, and consequently, upon the state. Dr Te Rangihiroa, MHR for Northern Maori, vividly described many of the ailments associated with syphilis.¹²⁶ The disease, he declared, posed a serious threat to the birth rate. It caused premature births, still-births, miscarriages and sterility in women. It had already led to a decline in Maori fertility.¹²⁷ This was one of the few occasions between 1880 and 1925 in which politicians mentioned Maori during debate on a sexual issue. John Findlay probably had the Pakeha population in mind when he announced his determination to save

the clean wife from the diseased husband, the new-born child from infantile blindness ... [and] the State from the growing burden of degeneracy, physical and mental, now in prisons, homes and asylums'.¹²⁸

Sexual diseases, he remarked, had proved a 'potent factor in racial injury'.¹²⁹ The decline in Maori fertility no doubt served as a warning sign of what could happen to Anglo-Saxon birth-rates should the state fail to take effective means to check the spread of venereal diseases.

Findlay recognised that public opposition to the Contagious Diseases Act meant that it would never again be implemented. He proposed that its repeal be followed by the introduction of a number of new clauses into the Public Health Act. These were to include the compulsory

¹²⁵ Quoted by Colonel Collins during debate on venereal diseases in the Legislative Council in 1916: *NZPD*, 177, 1916, pp.588-589.

¹²⁶ Te Rangihiroa (1877?-1951) was the Maori name of the prominent Maori doctor, military leader, health administrator, politician and anthropologist Sir Peter Buck.

¹²⁷ *NZPD*, 153, 1910, p.102.

¹²⁸ *Ibid.*, p.407.

¹²⁹ *Ibid.*, p.409.

notification of venereal diseases; power to order the isolation of sufferers; power to require sufferers to submit to medical examinations; and the imposition of heavy penalties on anyone who wilfully communicated the disease to another person. Men as well as women would be subject to these provisions.¹³⁰ Findlay rejected the old social purity argument that it was wrong 'to make vice safe'. Education and 'moral suasion', he argued, could not alone counter the spread of disease. 'If', he warned his colleagues,

you let any spirit of prudery, any false modesty -if you let some old rule that it is dangerous to make vice safe - stand in your way and do nothing, you are simply allowing the physique and physical health of this country to be gravely endangered by these growing evils'.¹³¹

The 'sentimentality' surrounding the question ought to be avoided. Much could be done if politicians acted in a 'rational and courageous manner' and treated venereal disease as they did any other notifiable contagious disease.¹³² Findlay wished to separate the disease from the metaphor. He argued that venereal disease should not be treated any differently from any other dangerous disease just because it was closely associated with immoral activity. This was principally a medical, public health issue, not a moral issue.

Debate in the Legislative Council revealed a new preparedness among politicians to recognise men's role in spreading venereal disease. Robert Loughnan, a devout Catholic relatively new to the Council, fully supported repeal of the Contagious Diseases Act. The legislation, he declared, had 'sheltered the conduct of men which can best be described as brutality, cowardice, hypocrisy and cynicism'.¹³³ Several other Councillors referred to the need to replace the Contagious Diseases Act with 'fairer' legislation: legislation which applied to men

¹³⁰ *Ibid.*, p.408.

¹³¹ *Ibid.*, p.407.

¹³² *Ibid.*

¹³³ *Ibid.*, p.414.

as well as women. Findlay emphasised this in his summing up speech. His new proposals, he noted, 'rejected all that was undesirable [in the old Contagious Diseases Act] - the unfair discrimination between the woman and the man'. The 'ruthless, reckless ruffian who goes from one end of the country to the other spreading his loathsome disease' would no longer be left untouched.¹³⁴

The discourse had, to a certain extent, been 'feminized'. It appears that the Councillors had come to accept the old feminist argument that the double standard inherent in the Contagious Diseases Act was both unfair and impractical from a public health point of view. This aspect of the feminists' argument was no longer openly derided as mere female sentiment. A change in the make-up of the Council may have encouraged this changed attitude for only eight of the anti-repeal Councillors of the mid 1890s remained in the Council in 1910. Nevertheless, the women's organisations remained highly suspicious of legislative initiatives regarding venereal disease. The Women's Christian Temperance Union suspected that women would continue to be disadvantaged by regulatory legislation.¹³⁵ It also argued that compulsory notification was unenforceable, particularly with regard to men. Moral education remained their preferred solution.¹³⁶ Findlay was well aware of such views but stated his hope that given time, these female 'prejudices' would be overcome.¹³⁷

Feminists' suspicions that the proposed legislation would disadvantage women were unlikely to be allayed by the speeches made in the Legislative Council. Despite the increased recognition of men's role in spreading venereal disease, Councillors continued to place much of

¹³⁴ Ibid, p.415.

¹³⁵ *White Ribbon* 3:28 (October 1897), p.7. Dalton, pp.75-76.

¹³⁶ Dalton, p.70.

¹³⁷ Ibid., pp.410-411.

the blame on prostitutes. Even Findlay reserved the bulk of his vitriol for the 'harlot, rotten with disease' who infected naive young men. In lurid detail, he described the syphilitic sufferings of two young men: one seduced by an 'elderly' woman and the other infected after spending 'ten minutes in a brothel'. The first case, he argued,

was a reliable illustration of the murder which can take place in our midst with impunity, because the hag who drew that lad of between fourteen or fifteen away, knowing she was rotten with disease, was perfectly well aware of what she was going to do with the boy, and she would have killed him infinitely less cruelly if she had thrust a knife into his heart there are hundreds, if not thousands, of cases in New Zealand in which young fellows have suffered affliction approaching in intensity to this case.¹³⁸

Several of Findlay's colleagues expressed similar sentiments. While they acknowledged that effective legislation must target men as well as women, they apportioned the bulk of the blame on prostitutes.

In 1910, after twenty-five years of lobbying by the repealers, Parliament finally repealed the Contagious Diseases Act. A majority of politicians in both parliamentary chambers finally recognised that the Act was both ineffective and unenforceable. Political apathy over an Act which was not actually being enforced helped delay the final repeal of the legislation long after its enforcement had ceased to be a viable option. Genuine fears of the impact of venereal diseases on individuals, families and the state also encouraged anti-repealers to retain the Contagious Diseases Act on the statute book until it could be replaced. Findlay's readiness to replace the Act with more effective measures was the catalyst for its eventual repeal in 1910.

Despite Findlay's good intentions, Parliament did not incorporate his proposed clauses in an amended Public Health Act. The suggested clauses encountered too much opposition from women's organisations and the medical profession. Both groups opposed the principle of

¹³⁸ NZPD, 153, 1910, p.406.

compulsion contained in Findlay's proposals. The Women's Christian Temperance Union considered compulsory notification unenforceable. Prominent member Macie Lovell-Smith argued that

Doctors could, & would in many cases, plead that professional etiquette entailed secrecy on their part, and thus, it would be probable that only the poorer people who couldn't afford to exact such secrecy would be those in detention, meanwhile vice would still be rife.¹³⁹

Compulsory notification would only drive the disease underground. The Union remained convinced that personal purity, sexual self-control, moral education and voluntary treatment provided the best solutions to the problem.¹⁴⁰ Many doctors also feared that notification would drive venereal disease underground. The New Zealand branch of the British Medical Association argued that notification by name would encourage sufferers to avoid reputable doctors and to seek out unscrupulous quacks.¹⁴¹ Although Findlay succeeded in reviving public and political debate on prostitution and venereal disease, his solutions proved too controversial for immediate implementation.

III

It took the First World War to shock politicians into turning the rhetoric of the previous decades into serious action. The fear of venereal disease expressed by politicians between 1880 and 1910 had failed to result in any significant new measures to combat prostitution or venereal disease. All that had been achieved was the retention of the Contagious Diseases Act on the statute books long after it had ceased to be viable. However, the outbreak of war provided the

¹³⁹ Letterbook of the Superintendent, Legal and Parliamentary Department, 1910-13, WCTU, Item 3, National Council of Women Archives, University of Canterbury, 15 July 1910, pp.42-44, cited in Dalton, p.67.

¹⁴⁰ *NZPD*, 1771,1916, p.295; Dalton, pp.85, 88-89.

¹⁴¹ *NZMJ* 9:37 (February 1911). See Chapter IV, pp.128-29, 139-40, regarding regular doctors' attitudes to 'quacks'.

catalyst needed for action. Internationally and domestically, the war exacerbated existing insecurities and anxieties over national fertility, strength and vigour.¹⁴² The health of soldiers aroused particular concern. War forced governments throughout the western world to reassess the dangers posed to soldiers and civilians alike by venereal diseases. Scientific advances also encouraged renewed action. In the first decade of the century scientists discovered the cause of syphilis, developed reliable diagnostic tests for the disease and discovered an effective treatment in Salvarsan.¹⁴³ Local and state authorities could now take far more effective action against syphilis, the most dreaded of the venereal diseases.¹⁴⁴

In 1916 the New Zealand Government introduced a War Regulations Bill into Parliament. The Bill dealt with a wide range of issues, including liquor regulations and enemy trade, but it also contained significant new proposals to suppress prostitution and prevent the spread of venereal disease.¹⁴⁵ Citing statistics obtained from the military training camps at Featherston and Trentham, the Minister of Health, George Russell, announced that venereal disease was rampant in New Zealand. This 'hideous cancer', he declared, was 'eating into the body politic' of the nation.¹⁴⁶ Although Russell insisted that he had no desire to reintroduce the provisions of the old Contagious Diseases Act, he clearly identified prostitutes as the major

¹⁴² Dalley, p.13.

¹⁴³ Immunologist Paul Ehrlich discovered Salvarsan, also known as '606', in 1909. Dairne Grant notes that it was not widely used in New Zealand until after the war, p.7. Its harsh effects on some patients (including a number of deaths) discouraged many doctors from using it: Brandt, pp.40-41. During parliamentary debate on venereal disease in 1917, Charles Poole, MHR for Auckland West, declared that Salvarsan had killed more people than syphilis itself: *NZPD*, 180, 1917, p.653.

¹⁴⁴ Brandt, pp.40-41.

¹⁴⁵ *NZPD*, 177, 1916, p.204. For a discussion of similar debates in Australia over alcohol and venereal disease in this period see Dan Coward, 'The Impact of War on New South Wales: Some Aspects of Social and Political History, 1914-1917' (Ph.D. Thesis, Australian National University, 1974), Chapter V.

¹⁴⁶ *NZPD*, 177, 1916, pp.210-11.

source of infection. Parliament had a duty, he argued, to take steps against those 'who for commerce place themselves beyond the pale of pure and virtuous womanhood'.¹⁴⁷

Russell used the War Regulations Bill to target a form of prostitution which had caused the police particular concern over the previous few years. In 1908 the Supreme Court had ruled that 'A prostitute's home, when no other woman frequents the house for prostitution, is not in the legal acceptance of the word a "brothel", even though the woman receives men there indiscriminately'.¹⁴⁸ The judgment resulted in the proliferation of 'one-woman brothels' in Auckland and Wellington. Frustrated by their lack of power to prosecute one-woman brothel keepers, the police launched a campaign for the elimination of the loophole in the law.¹⁴⁹ Politicians showed little interest in amending the legislation until the outbreak of war revived their fears over venereal disease. The 1916 War Regulations Bill subsequently included a clause to place one-woman brothels on the same footing as those containing two or more women. The regulations also empowered the police to take action against any woman who loitered in a public place 'for the purposes of prostitution' and authorised the governor to 'make such provisions as he thought advisable' regarding prostitution. Russell's colleagues readily endorsed these measures.¹⁵⁰

However, Russell's remaining anti-prostitution clauses failed to gain the whole-hearted support of his colleagues. Russell also proposed

¹⁴⁷ A number of soldiers sent to Egypt had returned the previous year, infected with venereal disease. However, Russell focused upon those men who had contracted the disease from local women: *ibid*, p.211. See also Tolerton, p.125.

¹⁴⁸ Quoted in Dalley, p.4.

¹⁴⁹ Dalley, p.8. Dalley's article discusses one-woman brothels and the campaign against them in detail.

¹⁵⁰ *New Zealand Gazette*, Vol.II (21 August 1916), pp.2803-04. Roberta Nicholls, *The Women's Parliament* (Wellington: Victoria University Press, 1996), p.104.

That every woman who is proved to be leading an immoral life shall, on conviction upon a charge of vagrancy, be subject to medical inspection, and if found to be diseased shall be detained until cured of that disease.¹⁵¹

The proposal, so reminiscent of the old Contagious Diseases Acts, proved unacceptable to the majority of politicians in the House. Russell had also declared that men 'convicted of consorting with known prostitutes, and ... found to be diseased, [should] in the same way, on conviction of being a vagrant, be held by the state until cured'. However, the requirement that men be convicted of vagrancy severely limited the numbers of men likely to come under the proposed regulations. The regulations defined vagrants as individuals who had no lawful means of support. Most men who used prostitute's services, including soldiers, would not have fallen into this category.¹⁵²

Russell's 'even-handedness' failed to sway his fellow parliamentarians in favour of the two clauses. While most politicians now supported the principle of targeting men as well as women - revealing a significant shift in gender relations - many opposed any element of compulsion in the legislation. James McCombs, MHR for Lyttelton, reminded his colleagues of the findings of the 1913 Royal Commission of Great Britain on Venereal Diseases. The Commission, he argued, had found that

directly you introduce the element of compulsion and there is a possibility of those suffering from the disease being detained, then instead of people coming forward to get treatment at free clinics, out of fear that having revealed themselves subsequent investigations will be made and they will be detained, and out of fear of suffering the rigours of the law in the matter of detention, they will not present themselves for treatment. If the finding of the Royal Commission was anything at all it was against that very element of compulsion

¹⁵³
...

¹⁵¹ *NZPD*, 177, 1910, p.212.

¹⁵² *Ibid.* See also, *NZPD*, 177, 1916, p.295.

¹⁵³ *NZPD*, 177, 1916, pp.295-96. Russell later argued that McCombs had misinterpreted the Commission's report. The Minister argued that while the Commission opposed a general policy

The Women's Christian Temperance Union also rejected Russell's proposals, noting that 'experience showed that every time it was women, & not men, that were chiefly affected by the practical application of the law'.¹⁵⁴ In order to get the legislation through Parliament, Russell later removed the two clauses from the Bill.¹⁵⁵ The resulting regulations, gazetted on 21 August, made no reference to venereal disease.¹⁵⁶

The following year the Government readdressed the thorny question of venereal disease. The impact of venereal diseases upon New Zealand soldiers in Egypt, France and London had caused considerable concern among politicians aware of the full extent of the problem. Official figures held that '13.4 per cent of the New Zealand troops in England contracted venereal disease in the first six months of 1917'.¹⁵⁷ Premier William Massey expressed particular concern over the toll that venereal disease was taking on the troops during a visit to England in early 1917. He raised the issue at a meeting of the Imperial War Cabinet.¹⁵⁸ Increased concern over the impact of venereal disease on the troops exacerbated existing fears over the impact of venereal disease upon the wider community. However, while the problem of infected soldiers

of compulsion it supported compulsion in specific cases and this was what the proposed regulations provided for: *NZPD*, 177, 1916, p.297.

¹⁵⁴ WCTU Minutes, National Convention, Wanganui, 21 March 1916 (MS Papers 79-057-09/11, ATL).

¹⁵⁵ See Fleming, 'Shadow over New Zealand', p.32; and Grant, pp.13-14.

¹⁵⁶ Nevertheless, in 1918 the police used the regulations to force medical examinations on five women arrested during a police raid. See Nicholls, pp.106-07, regarding police use of the regulations.

¹⁵⁷ The real rate was probably much higher given soldiers' reluctance to admit that they were infected and difficulties in diagnosing the precise nature of some ailments: Tolerton, p.150.

¹⁵⁸ Neither British nor New Zealand officials were prepared to support the introduction of prophylactic measures. Soldiers would continue to be treated after intercourse, not before. Continued social purity and feminist opposition to anything designed to 'make vice safe' or which should be seen as encouraging immorality precluded the use of 'preventives' or other prophylactic measures. The meeting concluded with a resolution requesting that the streets be kept clear of 'women of the prostitute class': Tolerton, pp.146-47.

could largely be handled by army and war office authorities, the spread of disease among the civilian population in New Zealand required a different approach.

In 1917 Massey's Government introduced the Social Hygiene Bill into Parliament. The Bill expanded upon some of the proposals put forward by John Findlay in 1910. In contrast to Russell's more limited proposals of the previous year, the proposed legislation seriously addressed the incidence of venereal disease in the population as a whole. The Bill required that all venereal disease sufferers (not just prostitutes and their clients) seek and undergo full treatment from registered medical practitioners. It also required that doctors fully inform patients of the nature of the disease and advise them not to marry until fully cured and that employers refrain from employing persons known to be diseased to handle foodstuffs.¹⁵⁹

Mindful of the fate of his previous year's proposals, Russell rejected compulsory notification. His changed stance also owed much to the growing belief that venereal disease could be contracted non-sexually. Sufferers' insistence that they could not have caught the disease from sexual contact led doctors to assert that venereal diseases could be contracted 'accidentally' from infected cups, towels, cigarettes and other objects.¹⁶⁰ Acknowledging that venereal disease carried a particularly heavy social stigma, Russell argued that notification would penalise those who contracted the disease 'innocently' or 'accidentally'.¹⁶¹ 'Innocent' wives and children, and those who contracted the disease 'accidentally' from toilet seats, dirty utensils, crockery, towels and the like, ought not be exposed to the world as sufferers of a

¹⁵⁹ Doctors often failed to inform married women of the true nature of their venereal ailments. Where the husband was also a patient, many felt that it would breach their code of professional secrecy to inform a woman that her husband had infected her with a disease he had probably contracted from 'immoral' activity: Tolerton, p.94; Brandt, pp.17-19.

¹⁶⁰ Brandt, pp.21-23.

¹⁶¹ *Ibid.*, p.136.

disease so closely associated with vice.¹⁶² Although Russell claimed to be a Minister of Health and not a Minister of Morals, his speech revealed his fundamental acceptance of the belief that some sufferers partly deserved their fate. By classifying sufferers as either 'innocent' or 'guilty' - depending upon how they contracted the disease - the Minister revealed that despite his good intentions he could not himself entirely separate sexual disease from morality.

Eugenically based fears that venereal disease was seriously undermining the health and welfare of future generations also encouraged the Minister to take a more broad based approach to the problem. 'This question', he argued,

affects the national efficiency. It also affects the national health, and it affects the purity and fitness of the future population. [The Bill] is probably a Bill which more than any other may be regarded as affecting the unborn millions.¹⁶³

Many of Russell's colleagues sympathised with this view. Charles Poole, the Liberal MHR for Auckland West, was most eloquent on this point:

I believe the National Government are going to rise in the appreciation of those who are interested in nation-building, and who are anxious, if possible, to restrict the operations or the effect of venereal trouble in the community, and so give a guarantee of health to the unborn children, for developing our manhood and womanhood, to old age - that this thing, that honeycombs, and undermines, and pollutes, and destroys, shall be so restricted that our Dominion will have a better chance to rise to a higher plane of moral and physical efficiency and therefore establish itself upon lines of righteousness that will not cast a reflection upon the future operation of those who have to continue its building up.¹⁶⁴

The effect of the disease upon the wider community, and upon future generations, was so serious that it could no longer be considered a private or personal matter. The state had a duty to ensure that all sufferers sought proper treatment.

¹⁶² The women's organisations similarly divided sufferers into the 'innocent' and the 'guilty': Dalton, pp.48-49.

¹⁶³ *NZPD*, 180, 1917, p.633.

¹⁶⁴ *Ibid.*, p.641.

Although Russell widened the scope of the proposed legislation to cover all sufferers, he nevertheless clung to his 1916 stance that prostitutes required special treatment under the law. Russell's 1917 Bill again incorporated compulsory clauses targeting 'prostitutes, or reputed prostitutes, and persons habitually consorting with them'. The Minister insisted that new procedures included in the proposed legislation fully protected women's rights. The police had been removed from the equation and the Chief Medical Officer, together with local advisory Boards consisting of three women and three men, would consider cases brought to their attention. Any medical examination of women or girls would be conducted by a woman doctor.

'There is nothing here', he argued,

that the most captious unbiased critic can regard as in any way reinstating the offensive Contagious Diseases Act which was in existence in New Zealand for some years, and which was wiped off our statute-book some years ago.¹⁶⁵

Nevertheless, as happened the previous year, opponents of compulsion forced Russell to abandon his efforts to introduce the compulsory clauses relating to prostitutes and their clients. The clauses smacked of regulation of prostitution and toleration of vice. Once again, the bitter legacy of the 1869 Contagious Diseases Act proved too great an obstacle for the Minister.¹⁶⁶

Although the women's organisations and their supporters rejected these clauses they supported the introduction of new measures to monitor and regulate the public behaviour of girls and young women. The Women's Christian Temperance Union had for a number of years urged the Government to appoint women police and women patrols to safeguard young people.¹⁶⁷ Russell responded to these requests in the successful final version of the Bill.

¹⁶⁵ *Ibid.*, p.635.

¹⁶⁶ *NZPD*, 181, 1917, pp.425-434. See also Dalton, pp.79-84.

¹⁶⁷ WCTU Minutes, National Convention, Christchurch, 22 March 1915 (MS Papers 79-057-09/11, ATL).

Section 12 of the Social Hygiene Act of 1917 empowered the Minister of Public Health to establish Health Patrols 'to protect the health and morality of young persons'.¹⁶⁸ Russell declared that he wished to appoint

good, motherly women ... of mature age, who ... when they see young girls getting into danger ... will warn them to go to their homes, and if necessary, exercise a reasonable measure of compulsion in insisting on them going to their homes.¹⁶⁹

The feminists anticipated that the patrols would serve their interests by promoting social purity in the community. The patrols would give moral guidance to the wayward young; advise parents of the need to protect their children from immoral influences; and keep a watch on public places where children might be exposed to moral or physical dangers.¹⁷⁰

Although the Act referred to the safeguarding of 'young persons', Russell and his colleagues clearly envisaged that the patrols would focus on wayward girls.¹⁷¹ Debate in the House of Representatives over the Social Hygiene Bill reveals a growing concern over the role played by promiscuous girls in the spread of venereal disease. Although these girls could not be classed as professional prostitutes, their 'loose' behaviour threatened public health as much, if not more, than that of those who made their living from selling sex. While feminist opposition prevented Russell from using venereal disease legislation to confront directly professional full-

¹⁶⁸ Social Hygiene Act, *NZ Statutes*, 1917, s.12 (1).

¹⁶⁹ *NZPD*, 180, 1917, p.638.

¹⁷⁰ See Dalton, pp.90-94, regarding the operation of the Health Patrols between 1917 and 1922.

¹⁷¹ In practice, the patrols did target girls and young women rather than boys and men: Dalton, p.92. However, the patrols did police male behaviour to a limited extent in that they watched for men preying on girls. In 1923, Health Patroller Mrs F. McHugh reported that she had warned two men in picture theatres 'whose obvious intention was to become too familiar with little girls': Social Hygiene Act -Propaganda - Reports by Mrs McHugh 1922-26, H1 b.84 130/6 (NA).

time prostitutes, the feminists' own desire to protect the young enabled the Minister to take some action against girls who might otherwise join the ranks of the professionals.

Studies of prostitution in New Zealand between 1908 and 1922 have noted an increased blurring of the lines between prostitutes and 'respectable' women and girls.¹⁷² Bronwyn Dalley has argued that debate over one-woman brothels led to a more intense scrutiny of women's conduct and that 'Those women not clearly identified as respectable increasingly became labelled as clandestine or amateur prostitutes'.¹⁷³ Dalley has also suggested that 'the appearance of young women in new public spaces' helped muddy the boundaries between the 'clearly respectable and clearly unrespectable'.¹⁷⁴ However, rising concern over 'amateur' or 'clandestine' prostitution and a sense that boundaries were becoming blurred can be traced back to the 1890s.

During the mid-to-late 1890s politicians, magistrates and the police all remarked upon an apparent increase in 'amateur', 'clandestine', 'sly' or 'miscellaneous' prostitution. Full-time prostitution appears to have declined after the turn of the century. A more balanced sex-ratio probably contributed to the decline. In 1861 there had been 62.16 females to every 100 males in the colony. By 1881 the proportion of females to 100 males had risen to 81.72 and in 1901 there were 90.33 females to every 100 males. Men's increased opportunities to marry meant they had less reason to seek the sexual services of prostitutes. As New Zealand society shifted from a frontier society to a settled and more domestic-centred society, prostitution assumed a less prominent role.¹⁷⁵

¹⁷² See Dalley, pp.18-19; Grant, pp.19, 30-35, 68.

¹⁷³ Dalley, p.18.

¹⁷⁴ *Ibid.*, p.19.

¹⁷⁵ *NZ Yearbook*, 1905, p.118; Olssen, p.257. See also Eldred-Grigg, p.164.

Dunedin Magistrate E.H. Carew and Christchurch Police Inspector P. Pender noted a decrease in the numbers of the 'professionals' as early as 1897. However, both remarked on the apparent increase in the numbers of young women involved in 'sly' or part-time prostitution. There is 'grave doubt', remarked Carew,

whether there is not now more immorality and prostitution by women, and chiefly young women, who are not dependent entirely upon the money obtained thereby than was formerly the case.¹⁷⁶

Sergeant J.S. Kelly also noted a blurring of the boundaries between the respectable and the unrespectable. In a report on the state of prostitution in Auckland in 1897, Kelly described the two classes of females causing concern:

there are from seventy to eighty women classed as prostitutes, and known to the police as such, at the present time in the city. They are from all ages, from seventeen years to over fifty years; and, besides these, there are a number of girls who are to be seen out till a late hour - say, 11 p.m. - nightly, smartly dressed, who live with their parents, and work during the day at laundries and factories for small wages, and at night are supposed to augment their earnings by prostitution. These girls, however, are hard to class as supposed prostitutes, as they are careful who they go with. Usually they are to be seen about the wharves, and in company with the better class of men from Her Majesty's warships when in port. They usually conduct themselves well, and the only thing to bring them to the notice of the public is the style of their dress and their head-gear.¹⁷⁷

Legislative Councillors debating the repeal of the Contagious Diseases Act in the mid-1890s similarly commented upon the changing nature of prostitution and the increased involvement of young 'amateurs'.¹⁷⁸

¹⁷⁶ Report of E.H. Carew, Stipendiary Magistrate (Dunedin) in Prostitution and the Contagious Diseases Acts (Reports from Stipendiary Magistrates, Inspectors of Police, and Medical Officers of Hospitals) from Evidence Taken by the Young Persons Protection Bill Committee, Confidential to Members of the NZ House of Representatives, Session II, 1897 (ATL), pp.7, 10.

¹⁷⁷ *Ibid.*, p.9.

¹⁷⁸ See Chapter VI, pp.254-56, 259-65.

The terms 'amateur', 'clandestine' and 'sly' prostitution described sexual relations outside marriage where the women and girls concerned did not appear to be earning their living from their sexual activities. Women and girls thus described included those who supplemented their earnings by occasional prostitution and those who entered into sexual relations with men or boys for non-commercial reasons.

The war-time conditions of the 1910s highlighted the existence of these young 'amateur' or 'novice' prostitutes.¹⁷⁹ Young urban women socialised freely with soldiers 'in restaurants and hotels, parks and [at] dances'.¹⁸⁰ Several politicians argued that it was these girls and young women who posed the greatest danger to the soldiers and to public health. In 1916, quoting an unnamed doctor, Lyttelton MHR James McCombs declared that

The fact is now universally recognized that the women who spread most disease are not the notorious prostitutes, but the novices - young girls who are just beginning an evil life. Many of these are not yet known to the police, and there is no possible means of controlling them.¹⁸¹

Dr Daisy Platts-Mills, in a pamphlet written at the Minister of Health's request in 1917, expressed similar sentiments:

The greatest danger to the state lies not in public prostitutes, who are usually sterile, but in **private or clandestine prostitutes - young girls of the 'respectable' section of society, to whom we look as the future mothers of the race.**¹⁸²

Although commentators noted that mature women also engaged in 'clandestine' prostitution, concern increasingly revolved around irresponsible girls and young women.

¹⁷⁹ Dalley, p.19.

¹⁸⁰ *Ibid.*

¹⁸¹ NZPD, 177, 1916, p.296. See also NZPD, 177, 1916, p.291 (Robert Wright).

¹⁸² Dr Daisy Platts-Mills, '"Social Diseases": What Women Should Know About Them - and Why' (1917), p.7: Venereal Disease - Pamphlets, Preparation of 1916-29: H1 8987 45/1 (NA).

A growing emphasis upon women's maternal role heightened concern over girls' sexual behaviour as Dr Platts-Mills' warning indicated. Anxieties over the declining birth rate and rising numbers of the 'unfit' inspired reformers and politicians to act to protect future 'mothers of the race'.¹⁸³ George Russell and members of the Women's Christian Temperance Union no doubt anticipated that the Health Patrols would play a role in re-educating the 'foolish' young girls whose activities exposed them to disease. For the nation's sake, as well as their own, young girls had to be dissuaded from embarking upon a course of life which could only too easily result in future sterility or in the production of diseased and defective offspring.

No history of prostitution and venereal disease in New Zealand would be complete without mention of Ettie Rout, New Zealand's most notorious sex reformer. On the same day that the Social Hygiene Bill passed its third reading in the House of Representatives, the *New Zealand Times* published a letter it had received from Rout. An energetic freethinker, eugenicist and committed socialist, Rout had organised a contingent of nurses to work among the New Zealand troops in Egypt. Rout soon recognised that venereal disease was one of the biggest problems confronting the army. She immediately set to work on the problem. In stark contrast to most prominent women reformers in this period, Rout saw venereal disease as primarily a medical rather than a moral problem. She accepted that soldiers would invariably seek out prostitutes and argued that they ought to be provided with prophylactic kits in order to protect themselves from disease. Dissatisfied with army authorities' approach to the venereal problem, Rout wrote to the *New Zealand Times*. In her letter, she suggested that the magnitude of the issue required that the soldiers be provided with prophylactic kits and that hygienic brothels be

¹⁸³ See Chapter II, pp.144-46, and Chapter VII, pp.309-14.

established for their use. She also declared that the High Commissioner for New Zealand and General Richardson, the New Zealand troop commander, had approved these initiatives.¹⁸⁴

The letter provoked a storm of protest from the New Zealand women's organisations. At its annual conference the following year the Women's Christian Temperance Union expressed its

utter abhorrence of the effrontery of Miss Ettie Rout in implying that our boys must be supplied with remedies to make wrongdoing safe, & sin easy. We contend that we send our sons to fight for purity & righteousness & we utterly discountenance everything that slackens moral fibre & self control, & place on record our emphatic repudiation of prophylactics & the woman who advocates them.¹⁸⁵

The New Zealand Government, well aware of the political risks associated with open support for Rout's work, swiftly moved to distance itself from her. In a statement in the House, the Minister of Defence, Sir J. Allen, denied that Rout's proposals had gained official support. He also declared that her letter exaggerated the extent of the problem.¹⁸⁶

For the remainder of the war, the Government banned the New Zealand press from printing any more of Ettie Rout's letters or articles. While some politicians no doubt sympathised with her focus on medical rather than moral intervention, her views proved too controversial for public consumption. Although the Minister of Defence later authorised soldiers' use of Rout's kits while they were overseas, he did not publicise his decision and continued to condemn her in public.¹⁸⁷ Feminist and social purity-based opposition to any attempts to make vice 'safe' forced Allen to tread carefully. However much politicians

¹⁸⁴ Barbara Brookes, 'Ettie Rout', *DNZB*, Vol.III, pp.443-444; Tolerton, Chapters VI-XII.

¹⁸⁵ WCTU Minutes, National Convention, Timaru, 18 March 1918 (MS Papers 79-057-09/11, ATL).

¹⁸⁶ *NZPD*, 181, 1917, p.377.

¹⁸⁷ Tolerton, p.169.

sympathised with Ettie Rout's medically-based solutions, they could not afford to ignore purity-based opposition to any attempt to make vice 'safe'. Medical solutions - at least those which could not be concealed from the New Zealand public - could only be applied within a broad social purity-centred moral framework.

IV

Political interest in prostitution declined after the war. Politicians appeared satisfied with existing legislation and no new measures were initiated in either the House of Representatives or the Legislative Council between 1918 and 1925. However, venereal disease continued to cause concern, particularly when infected soldiers began to return to New Zealand.

In 1919 the Government established venereal clinics in the four main centres to provide free treatment for returned servicemen and the general public.¹⁸⁸ However, this action failed to satisfy many members of the medical profession who urged the Government to take further action to combat venereal diseases.¹⁸⁹

In 1922 the Health Department responded to this pressure and established a Committee of Inquiry into Venereal Diseases to examine thoroughly all aspects of problem.¹⁹⁰ The Minister of Health appointed Committee members from among members of the Board of Health. The appointees included W.H. Triggs, a member of the Legislative Council and Committee Chairman; Dr J.S. Elliot, a member of the Medical Board; Murdoch Fraser, a representative of the Hospital Boards of the Dominion; Dr J.P. Frengley, the Deputy Director of Health; Sir Donald McGavin, the Director-General of Medical Services; and Lady Luke, the

¹⁸⁸ See Fleming, 'Shadow Over New Zealand', p.40; Parcell, p.8; Grant, p.30.

¹⁸⁹ Venereal Diseases in New Zealand, Report of the Committee of the Board of Health, *AJHR*, 1922, Vol. III, H-31A, p.2.

¹⁹⁰ Parcell, p.11; Grant, p.30.

sole woman member of the Board of Health. The Committee discussed previous legislation, examined the prevalence of venereal disease in New Zealand and the causes of that prevalence, and considered the best means of combating and preventing venereal diseases.

The Committee's report reiterated many of the points raised by politicians during the war. It made particular mention of the adverse impact venereal diseases had upon the birth rate and upon population quality. Venereal diseases not only caused sterility, miscarriage and the early death of infants, they caused serious physical and mental defects including heart-disease, blindness, deafness, epilepsy and idiocy. It argued that venereal disease was not just a problem for prostitutes and their clients, it affected all members of society. It thoroughly endorsed politicians' rejection of the old Contagious Diseases Act. '[N]o legislation can be effective', they argued, 'unless it deals equally and adequately with all men, women, and children sufferers from venereal diseases of all kinds'.¹⁹¹

The Committee agreed with previous suggestions that young 'amateur prostitutes' were more dangerous than the professionals. The Committee concluded from the available evidence that professional prostitution in New Zealand existed at a very low level. According to the Commissioner of Police, only 104 women in New Zealand could be classed as professional prostitutes.¹⁹² In addition, the Committee noted that

It would appear also that the professional prostitute, as a result of her knowledge and experience, is less likely to transmit venereal disease than the 'amateur'. It is therefore principally to clandestine or amateur prostitution that one must look for the dissemination of the disease, and inquiry into the conditions which tend to the production of the amateur prostitute is a direct enquiry into the prevalence of venereal disease.¹⁹³

¹⁹¹ 1922 Venereal Disease Committee Report, pp.5, 7.

¹⁹² *Ibid*, p.11.

¹⁹³ *Ibid*.

The 'old hag' prostitute, it appeared, no longer posed a significant threat to the nation. The wayward, promiscuous girl had taken her place.

The Committee's report commented that promiscuity appeared prevalent in all social strata. An examination of birth and marriage statistics had revealed that more than 50 per cent of all first births occurring within the first year of marriage had resulted from pre-marital sexual contact. The Committee blamed the high level of promiscuity on moral laxity stemming from the relaxation of parental controls; lack of proper training and instruction of the young; bad housing and general conditions of living; delayed marriage; alcohol; the modern dress of women; 'certain modern forms of dancing'; the cinema; and the 'presence in the community of individuals, especially girls, who are to some degree mentally defective or morally imbecile'.¹⁹⁴

The Committee expressed particular concern over the activities of 'feeble-minded' girls. The rise of the eugenic movement during the early 1900s had encouraged an increased focus upon the sexual behaviour of the mentally defective.¹⁹⁵ In his evidence to the Committee the Director of Education, Mr J. Caughley, declared that mentally defective girls were 'a great source of danger to themselves, since they have little or no will-power or sense of restraint'.¹⁹⁶ The Committee agreed. It noted that these girls 'are easily approached and facile victims for men. In spite of a degree of mental or moral defect they may be physically attractive'.¹⁹⁷ Such girls could only too easily become a foci of infection in the community.¹⁹⁸

The growth of social freedoms for the young, the relaxation of traditional moral restraints, the decline of the professional prostitute and the rise of eugenic ideology all encouraged the

¹⁹⁴ Ibid, pp.11-12.

¹⁹⁵ See Chapter VII, pp.312-14.

¹⁹⁶ 1922 Venereal Disease Committee Report, p.21.

¹⁹⁷ Ibid., p.12.

¹⁹⁸ Ibid., p.12.

reconceptualisation of the sexually dangerous female during the early 1900s. The degraded and corrupted prostitute so reviled by the politicians of the 1880s and 1890s had largely disappeared from view by the 1920s. The 1922 Committee largely ignored the professional prostitute in its list of recommendations for action. The sole reference to these women consisted of a statement rejecting the introduction of 'the Continental system of licensed brothels, or a revival of the Contagious Diseases Acts in any shape or form'.¹⁹⁹ The less conspicuous 'amateur' and the 'feeble-minded' girl now posed the greatest threats to the future welfare of the nation.

In its report, the Committee recommended a combination of moral and medical approaches be applied to the venereal disease problem. The report argued that while the question had 'very important medical aspects' which ought not be neglected, it was 'essential to the health and wellbeing of the nation that the enemy should be attacked with every moral and spiritual weapon'.²⁰⁰ The Committee consequently recommended that 'sex hygiene' be taught in schools and that 'noble ideals' concerning motherhood and infancy be instilled in children. Much could also be done if physical instructors in schools preached 'the gospel of "physical fitness" and personal cleanliness in thought, word and deed'. The Committee also suggested that more venereal disease clinics be established and that they have longer opening hours. It supported conditional notification of venereal disease, 'by number or symbol only', and recommended that infected individuals who persistently refused to undergo treatment, and who appeared likely to infect others, ought to be able to be detained in a prison hospital. Finally, it recommended that mental defectives be segregated in order to keep them out of sexual circulation.²⁰¹

¹⁹⁹ *Ibid.*, p.21.

²⁰⁰ *Ibid.*, p.12.

²⁰¹ *Ibid.*, pp.12-15, 21-22.

The report was favourably received. However, it failed to result in any new legislative initiatives. Bureaucratic delays and the ill health of the Premier, William Massey, delayed the introduction of legislation and the impetus for implementation of the Committee's recommendations gradually evaporated over the following few years.²⁰²

The Committee's report reveals a significant change in official attitudes to prostitution. It also reveals a new unity of sanitary and moral principles in anti-venereal disease initiatives. The situation had changed considerably since the 1880s when social order and narrow sanitary concerns dominated legislative responses to prostitution and venereal disease. By the early 1920s professional prostitutes' role in disseminating disease had become of relatively little concern. The decline of professional prostitution and the apparent rise of freer sexual relations between young people forced a reassessment of public health policy. Politicians and officials increasingly accepted that the problem of venereal disease could not be effectively dealt with unless public health initiatives applied to all members of society. While concern remain focused upon females - principally promiscuous and/or feeble-minded young girls - solutions proposed applied to all: male and female, young and old, and existing and potential sufferers.

V

Political responses to prostitution remained heavily influenced by sanitary and social order considerations throughout the late 1880s and early 1920s. The rise of the feminist and social purity movements during the 1880s forced a reconsideration of Government policy between 1884 and 1910. However, analysis of political debate over the controversial Contagious Diseases Act has revealed that politicians in both parliamentary chambers proved highly resistant to repeal arguments based upon abstract principles of justice and morality.

²⁰² Parcell, p.36.

Politicians proved far more interested in the effectiveness of the legislation as a public health measure than in its alleged breach of women's rights. Nevertheless, they could not ignore the impact of justice and morals-based arguments on the general public. Public resistance to the Act forced politicians to acknowledge that its unpopularity rendered it ineffective as a public health or social order tool. However, it was not until the Minister of Justice, John Findlay, proposed to replace the Act with more effective public health legislation that Parliament repealed the Act. Ultimately, practical considerations - including the Act's unpopularity, its costliness and its sanitary deficiencies - led to its repeal. Although feminists' justice and morality-based arguments helped foster public opposition to the Act, these arguments on their own proved insufficient to persuade politicians to repeal the legislation. Many politicians displayed a continued adherence to old libertine and patriarchal discourses which accepted the inevitability of prostitution.

Justice and morals-based arguments became more significant during the 1910s and 1920s. Politicians became less willing to condone the sexual double standard inherent in the Contagious Diseases Act and more willing to acknowledge men's role in the spread of venereal diseases. Gender relations had shifted and the discourse had, to a limited extent, become feminised. The gradual evening-up of the sex ratio and women's increased political power encouraged a more sympathetic climate. Politicians accepted that they could not afford to ignore women voters' opposition to regulatory legislation. The shift from a frontier to a more settled, domestic society also contributed to a more reformist atmosphere. Social purity ideology fitted more comfortably within a family-centred settled society rather than a male-dominated pioneering society.

The decline of the professional prostitute, the increased independence of young women and the rise of the eugenics movement also encouraged politicians to amend their views on prostitution. As the 'amateur' and the 'feeble-minded' female replaced the professional prostitute as the principal objects of concern, politicians increasingly took a more holistic view of the problem. The feminists and social purity reformers had always argued that measures addressed to prostitutes alone were doomed to fail. Venereal disease was a problem for society as a whole. Politicians increasingly accepted this perspective.

Sanitary principles remained at the forefront of political thinking throughout the period but morality and health remained closely intertwined. Politicians and officials became more prepared to supplement medical interventionist strategies with morals-based education. The 1922 Committee's report on venereal disease incorporated feminist and social purity discourse within a wider medical discourse. Public health rested upon a combined moral-medical strategy: a strategy which upheld sexual self control as a moral virtue and as a central pillar of public health policy.

Despite politicians' attempts to distinguish between 'pragmatism' and 'sentiment' (or 'principle', as the feminists would argue), they themselves could not separate the two aspects of the debate. At the beginning of the period the sanitary principle, underpinned by social order considerations, dominated political thought on prostitution. By the end of the period morals and justice-based consideration had ameliorated the narrow sanitary focus. Political discourse, heavily influenced by medical views of prostitution, had become infiltrated by feminist-purity discourse. However, social changes - in particular, the decline of the professional prostitute - also played a major role in changing political attitudes to prostitution. Ideological and social

changes together shifted attempts to deal with venereal disease away from a narrow focus on prostitutes to a focus upon the wider community.

CHAPTER VI

PROTECTION AND CONTROL

SEX, YOUTH AND THE STATE

Increased state concern over sexuality during the nineteenth century coincided with a transformation of attitudes towards children. A new recognition of children as beings apart from adults developed in western society together with a heightened concern for children's health and welfare. Numerous voluntary organisations dedicated to improving the lives of children emerged and children's employment, schooling, discipline and general welfare all became subject to increased state intervention and control.¹ In New Zealand the Governments of the 1880s and 1890s enacted Infant Life Protection Acts, placed new restrictions on children's hours and conditions of work and extended the period of compulsory school attendance.² Concerned citizens established new child-focused reform organisations, including the New Zealand Society for the Protection of Women and Children and the Christchurch Children's Aid Society.³

¹ For discussion of the British child protection movement see Lionel Rose, *The Erosion of Childhood: Child Oppression in Britain 1860-1918* (London & New York: Routledge, 1991), pp.233-43, and Hugh Cunningham, *The Children of the Poor: Representations of Childhood Since the Seventeenth Century* (Oxford: Blackwell, 1991), pp.143-146. On the child protection movement in the United States see Anthony Platt, *The Child Savers: The Invention of Delinquency* (Chicago: University of Chicago Press, 1969).

² For a detailed discussions of these new initiatives see Jeanine Graham, 'Child Employment in New Zealand', *NZJH*, 21:2 (April 1987), *passim*, and Jan Beagle, 'Children of the State: A Study of the Industrial School System 1880-1925' (M.A. Thesis, Auckland, 1974), *passim*. See also Margaret Tennant, *Children's Health, The Nation's Wealth: A History of Children's Health Camps* (Wellington: Bridget Williams Books/Historical Branch, Department of Internal Affairs, 1994), pp.14-17, and Tennant, *Paupers and Providers: Charitable Aid in New Zealand* (Wellington: Allen & Unwin/Internal Affairs, 1989), Chapter VII.

³ The SPWC was established in Auckland in 1893, in Wellington in 1897, in Dunedin in 1899 and in Christchurch in 1907. Its stated intentions included prosecution 'in cases of cruelty, seduction, outrage or excessive violence to women and children', making provision for the

The new concern over child welfare had important implications for sex legislation. Feminists and social purity reformers readily identified children - girls in particular - as sexually vulnerable individuals who required increased state protection. Political debates over sex legislation reflected the increased concern over children's wellbeing. Reform-minded politicians continually juxtaposed youthful vulnerability and sexual danger in debates over such varied issues as prostitution, censorship, incest, sexual assault and homosexuality. During the 1880s and 1890s reformers addressed youthful sexual vulnerability in two campaigns. The first demanded an increase in the age of consent for girls. The second called for the introduction of a curfew to help curb 'juvenile depravity' and immorality. The two campaigns reveal the existence of an extended battle to reshape perceptions of girls' sexuality and to exert new controls over those girls who refused to conform to these perceptions.

I

Efforts to reform and extend legislation relating to children during the late nineteenth and early twentieth centuries followed two major transformations in perceptions of childhood. The first of these involved an increased emotional investment in children. Between 1870 and 1930 there was a major shift in attitudes towards children who increasingly became valued as objects of sentiment rather than as useful workers: the economically useful child gave way to the sentimentalised child.⁴ The roots of the sentimentalisation of children lay in the events

children of unfit parents and agitating for improved laws relating to the protection of women and children. See the *Report and Balance Sheet of the New Zealand Society for the Protection of Women and Children* (Auckland, 1895) (AMIL), p.4. See Raewyn Dalziel, *Focus on the Family: The Auckland Home and Family Society 1893-1993* (Auckland: David Ling Publishing Ltd, 1993), pp.7-25, for a discussion of the establishment and work of the Auckland branch of the SPWC.

⁴ Vivian A. Zelizer, *Pricing the Priceless Child: The Changing Social Value of Children* (Princeton: Princeton University Press, 1994), pp.5-7.

which led to the emergence of romantic marriage. The eighteenth-century Romantic movement's promotion of benevolence to one's fellow creatures encouraged the development of more protective attitudes towards women and children and led to an intensification of affective relationships within families.⁵ Increased prosperity during the nineteenth century and the development of the 'family wage' also played a role. The growth of middle-class wealth increasingly enabled prosperous parents to dispense with the labour of their children. The trade unions took hold of the middle-class emphasis upon the father as sole earner and the 'family wage' gradually became the ideal for the working classes.⁶ Children's increased economic dependence upon their parents further contributed to the sentimentalisation of the child. A new emphasis upon children's natural purity and innocence also encouraged new efforts to protect the young from the harsh realities of life. By the late nineteenth century - for those who could afford it - childhood had attained a privileged status.⁷

The sentimentalisation of children occurred earliest in the middle and upper classes. However, during the later nineteenth century social reformers incorporated the children of the poor into this new model of childhood.⁸ All children, they argued, not just those from wealthy homes, deserved a non-working and carefree childhood.⁹ Reformers' desire to ameliorate the lot of working-class children may have been inspired as much by fears of social disorder as by

⁵ Lawrence Stone, *The Family, Sex and Marriage in England 1500-1800* (London: Weidenfeld & Nicolson, 1977), p.163 and Chapters VI & IX. For a more recent discussion of origins of the transformation of attitudes towards children see Eric Hopkins, *Childhood Transformed: Working Class Children in Nineteenth Century England* (Manchester & New York: Manchester University Press, 1994), pp.1-7. See also Cunningham, pp.71-83, on the connections between the abolition movement and child welfare.

⁶ Diana Gittens, *The Family in Question: Changing Households and Familiar Ideologies* (London: Macmillan, 1993), pp.27-29.

⁷ Cunningham, p.3.

⁸ *Ibid.*, p.134.

⁹ *Ibid.*, pp.3-7, 151-163.

genuine compassion and philanthropy. Middle-class reformers considered working-class family life to be marked by immorality and a lack of discipline and control. Their support for compulsory education owed much to a desire to tame unruly working-class youth and to produce disciplined and docile workers.¹⁰

Growing political acceptance of the importance of children's health and welfare for long-term national stability and security also encouraged new initiatives to protect the young. During the early 1900s social darwinist and eugenic fears over racial degeneracy stimulated a new political concern for the welfare of the nation's youth.¹¹ New legislation targeting the vulnerable young arose out of new sentimental attitudes to children. However, it also owed much to social control imperatives and a desire to protect a newly-appreciated national resource.¹²

The extension of the concept of childhood constituted a second major transformation in perceptions of childhood. Historians generally accept that 'childhood is in part a social category, rather than an immutable stage of life'. Different societies have different ideas about the way children ought to behave and about the demarcation line between childhood and adulthood.¹³ The sentimentalisation of children during the nineteenth century contributed to an extension of childhood in Western society. Restrictions upon children's hours of work and the introduction of compulsory schooling simultaneously undermined children's economic function in society and lengthened the period of childhood dependence upon adults. Ideas about the age at which childhood ends not only vary between societies, they can also vary significantly within

¹⁰ Gittens, pp.142-43; Hopkins, p.6. See also Judith Walkowitz, *Prostitution and Victorian Society: Women, Class and the State* (Cambridge: Cambridge University Press, 1980), p.251.

¹¹ Concern focused upon the welfare of urban, pakeha youth rather than rural or Maori youth.

¹² Hopkins, p.6; Cunningham, p.5.

¹³ Tennant, *Children's Health*, p.14. See Cunningham, pp.1-7, and Hopkins, pp.1-8, for discussion of the historiography of childhood.

a society or community. In New Zealand different laws enacted during the 1860s and 1870s placed different limits on childhood:

The 1865 Master and Apprentice Act applied to children over the age of 12 years; the 1867 Neglected and Criminal Children Act provided for children under the age of 15; the Offenders Against the Person Act of 1867 defined child-stealing as applying to boys and girls under 14 years. Under the 1877 Education Act, most children aged from seven to 13 were required to attend school.¹⁴

The lack of legislative consensus over the boundaries of childhood continued into the 1880s and 1890s. Although twelve was generally accepted as the end of childhood during the 1880s - replaced by fourteen in the 1890s and early 1900s - uncertainty over the boundaries remained.¹⁵

The extension of childhood did not go unchallenged. Vigorous debate often accompanied efforts to offer increased protection to, or impose new controls over, children and young people by extending the upper age limits of childhood.

II

Increased sentimentalisation of children and the extension of childhood had significant implications for the state regulation of sexually active girls and their adult 'seducers'. During the later decades of the nineteenth century social purity and feminist imperatives meshed with the new focus on child welfare to produce an intense concern over the sexual exploitation of young girls. The feminist critique of male immorality, already well advanced in debates over prostitution and divorce, expanded to include a particularly vehement criticism of men's sexual use and abuse of girls and young women. Social purity reformers and feminists appealed to the state to introduce new legislation which would protect girls from falling prey to men's carnal appetites.

¹⁴ Graham, pp.62-63.

¹⁵ *Ibid.*, pp.65, 75.

In Britain, North America, Australia and New Zealand reformers demanded better protection of girls via a higher age of consent. The age of consent for girls had developed as a mechanism for protecting fathers' rights to control their daughters' sexuality rather than as a means of protecting girls.¹⁶ However, reformers saw age of consent laws as a valuable tool for protecting sexually vulnerable young girls from men's advances. In 1870 the age of consent in Britain and the Australasian colonies was twelve years of age. In some American states it was as low as ten years.¹⁷ Campaigns for a higher age of consent emerged first in Britain where the Government raised the age to thirteen years in 1875.¹⁸ However, it was during the 1880s that the age of consent truly emerged as a significant public and political issue for the English-speaking world.

During the early 1880s opponents of state-regulated prostitution in Britain claimed that young English girls had been spirited off to the continent to serve as prostitutes in state-regulated brothels in Belgium, Holland and France. A Government investigation into the allegations produced evidence in 1881 indicating that young English girls had indeed been 'bought and sold as merchandise to Continental brothels through the agency of foreign procurers who operated in England'.¹⁹ The investigation exposed significant loopholes in English legislation. Continental procurers evidently found it easier to target young English girls than to target those on the Continent. Opponents of the 'white slave trade' argued that raising the age of consent would place a substantial barrier in the path of those who trafficked in the bodies of

¹⁶ There was no age of sexual consent for boys. See Deborah Gorham, 'The "Maiden Tribute of Modern Babylon" Re-examined: Child Prostitution and the Idea of Childhood in Late-Victorian England', *Victorian Studies* 21:3 (Spring 1978), p.363.

¹⁷ James Messerschmidt, 'Feminism, Criminology, and the Rise of the Female Sex "Delinquent", 1880-1930', *Contemporary Crises* 11:3 (1987), pp.247-48.

¹⁸ Deborah Gorham, 'Maiden Tribute', p.364.

¹⁹ *Ibid.*, 'Maiden Tribute', p.358.

English girls.²⁰ Agitation over the exploitation of girls increased following the repeal of the English Contagious Diseases Acts in 1883. White slavery and child prostitution, both at home and abroad, replaced the Acts as the prime focus of the British social purity movement.

In 1885, capitalising upon social purity agitation over the sexual exploitation of young girls, the *Pall Mall Gazette* published a sensational exposé of 'the white slave trade'. In a graphic series of articles entitled 'The Maiden Tribute of Modern Babylon', *Gazette* journalist William T. Stead luridly described the ease with which procurers could buy young virgins for the purposes of prostitution.²¹ The publication of Stead's articles provoked an immediate public outcry. A crowd estimated at 250,000 gathered in Hyde Park to demand an increase in the age of consent. The British parliament, primed by the evidence of the earlier investigation, acceded to their demands and raised the age of consent for girls from thirteen to sixteen.²²

White slavery was not a significant issue in New Zealand. Nevertheless, inspired by events in Britain, colonial reformers lobbied the New Zealand Parliament from 1886 to at least match the British age of consent if not raise it higher still. Representatives of the Anglican, Methodist and Baptist Churches were among the first to petition Parliament to provide for the better protection of girls and young women.²³ The Bishop of Christchurch urged legislators to

²⁰ Gorham, 'Maiden Tribute', pp.359-60. See also Walkowitz, *Prostitution*, pp.246-250.

²¹ See Judith Walkowitz, *City of Dreadful Delight: Narratives of Sexual Danger in Late-Victorian London* (Chicago: University of Chicago Press, 1992), Chapter III; and Ronald Pearsall, *The Worm in the Bud: The World of Victorian Sexuality*, first published 1969 (London: Pimlico, 1993), pp.296-306, for detailed discussion of Stead's background, motivations and actions.

²² Walkowitz, *Prostitution*, pp.246-47. For a detailed description of the English campaign to raise the age of consent see Gorham, 'Maiden Tribute', *passim*. See Walkowitz, *City*, Chapter IV, for a discussion of the cultural consequences arising from the publication of the 'Maiden Tribute'.

²³ Three other petitions also argued in favour of raising the age of consent. These were headed by William Keall, John Parkin and George Thompson: Public Petitions, *AJHR*, 1886, Vol.IV, I-1, nos.108, 176, 196, 223, 289, 346.

raise the age of consent to sixteen years. The Presidents of the Wesleyan Methodist Church and the Baptist Union petitioned for an increase to eighteen years. Two years later a group of Wellington citizens eager to find some way of reducing the numbers of juvenile prostitutes on the city's streets added their voices to the call for a higher age of consent.²⁴ During the early 1890s the campaign received a major boost when New Zealand's feminists embraced the issue as one of the cardinal demands of their programme for social and sexual reform.²⁵

New Zealand politicians proved less responsive than their British counterparts to calls for a higher age of consent. Lack of evidence of white slavery in New Zealand together with a feeling that these were problems peculiar to the old world reduced the urgency of the issue. Although the Minister of Justice incorporated a clause in the Criminal Code Bill of 1886 to raise the age of consent to sixteen, problems arising from the complicated nature of the Bill prevented its enactment.²⁶

Renewed agitation in Wellington in 1888 prompted the Government once again to attempt to raise the age of consent to sixteen. The Minister of Justice, Thomas Fergus, declared that the chief object of the 1888 Offences Against the Person Bill was to bring the law 'somewhat in conformity with the law existing at the present time in England and in the adjoining colonies'.²⁷ He also argued that colonial girls needed the increased protection offered

²⁴ Barbara Brookes, 'A Weakness for Strong Subjects: The Women's Movement and Sexuality', *NZJH* 27:2 (October 1993), p.143.

²⁵ The WCTU first passed a resolution advocating that the age of consent be raised in 1894 at the Invercargill National Convention: WCTU Minutes, National Convention Minutes, Invercargill, 28 February 1894, p.7 (MS Papers 79-057-09/13, ATL). Prior to this the Union had concentrated its 'anti-vice' efforts on urging Government to repeal the Contagious Diseases Act and to introduce the female franchise.

²⁶ Criminal Code Bill, *Bills Thrown Out*, 1886, s. 202 (1). The legislators did not debate the age of consent during discussion of the Bill.

²⁷ *NZPD*, 62, 1888, p.329.

by a higher age of consent.²⁸ The implication that the Australian colonies had fallen into line with Britain was somewhat misleading. The furore over publication of the 'Maiden Tribute' had resulted in the raising of the age of consent to fifteen in South Australia in 1885.²⁹ However, legislators in Queensland, Victoria, Western Australia and New South Wales proved less amenable to the demands of the social purity movement and did not raise the age of consent in their respective colonies until the early 1890s.³⁰

Despite strong support in the New Zealand House of Representatives in 1888 for a higher age of consent, the clumsy and complicated nature of the Government's proposed legislation thwarted its attempt to follow the British and South Australian precedents. In addition to raising the age of consent to sixteen the Bill included clauses dealing with acts of indecency committed upon males of any age; sexual intercourse resulting from a man's impersonation of a married woman's husband; and consent to an indecency obtained by 'false and fraudulent representation as to the nature and quality of the act'.³¹ The extra clauses provoked a mixture of outrage and laughter among the politicians. 'No man of intelligence', declared John Kerr, member for Motueka, would give credence to the suggestion that a man could induce a married woman 'to permit him to have connection with her by personating [*sic*] her husband'.³²

²⁸ *Ibid.*

²⁹ Lynette Finch, *The Classing Gaze: Sexuality, Class and Surveillance* (St Leonards: Allen & Unwin, 1993), p.77.

³⁰ On the debate in Australia see Finch, pp.77-81, 92; Ross Barber, 'The Criminal Law Amendment Act of 1891 and the "Age of Consent" Issue in Queensland', *Australia and New Zealand Journal of Criminology* 10:2 (June 1977); Deborah Tyler, 'The Case of Irene Tuckerman: understanding sexual violence and the protection of women and girls 1890-1925', *History of Education Review* 15:2 (1986); and Jill Bavin-Mizzi, *Ravished: Sexual Violence in Victorian Australia* (Sydney: University of New South Wales Press, 1995), pp.68-71.

³¹ *NZPD*, 62, 1888, pp.329-330.

³² *Ibid.*

Despite a more positive response to the proposed raising of the age of consent, a general feeling that sixteen was rather too high an age for the New Zealand situation further limited the Bill's appeal.³³ Thomas Hislop, MHR for Oamaru, summarised the view of several of his colleagues:

[Although] it had been found necessary in England to raise the age of consent, he did not think it was necessary in these colonies to raise the age so high as was proposed ..., for here the youth arrived at maturity at an earlier age than they did in the colder climate at home.³⁴

The House subsequently discharged the Bill.

Chastened by the House of Representatives' rejection of the Bill, the Government introduced an amended version the following year. The 1889 Offences Against the Person Bill provided for a mere two year increase in the age of consent. The Government had noted the reservations of members and considered it inexpedient to attempt to raise the age of consent beyond fourteen years.³⁵ Its caution paid off. The Bill successfully passed through both parliamentary chambers with very little debate or dissension.

Pressure upon the Government to raise the age of consent eased following the enactment of the 1889 Offences Against the Person Act. However, in 1894 the issue once again became the subject of serious political debate. Following the granting of the franchise to women in 1893 the campaign to raise the age of consent re-emerged with a vengeance. Feminists, well aware of their new power as potential voters, vigorously lobbied Parliament to provide for the better protection of women and girls. In 1894 Parliament received a total of eighteen petitions on the subject from women's organisations and religious groups, most of which proposed that

³³ *Ibid.*, pp.330-333.

³⁴ *Ibid.*, p.330.

³⁵ *NZPD*, 66, 1889, p.2.

the age of consent be raised to sixteen.³⁶ The Government responded with a Criminal Code Bill which proposed that sixteen become the new legal age of consent. But although the Bill met with the approval of the House of Representatives the Legislative Council firmly rejected the proposed increase. In an explanatory statement submitted to the House the Councillors noted their opposition to the proposal on the grounds that girls in New Zealand were 'fully matured' before they turned sixteen years of age and usually before they reached the age of fifteen.³⁷ Faced with the Council's resolute rejection of a two year increase, the House of Representatives sought a compromise. The two chambers subsequently passed an amended Bill which raised the age of consent to fifteen.³⁸

Continued pressure on the Government to at least match the British age of consent resulted in the introduction in 1895 of yet another Bill proposing that sixteen be accepted as the age of consent. Once again, a majority of Councillors thwarted the successful passage of the Bill. Undaunted, Richard Seddon reintroduced the Bill in 1896. An attempt by James Kelly, the member for Invercargill, to amend the Bill in favour of an age of consent of eighteen was defeated in the House by a vote of thirty-six to eighteen.³⁹ Had Kelly succeeded in amending the Bill it is possible that the Council would once again have vetoed the proposed legislation. However, in 1896, eleven years after Britain raised the age of consent to sixteen, the majority of Legislative Councillors finally acceded to the demands of reformers and passed Seddon's Bill.

³⁶ Public Petitions, *AJHR*, 1894, Vol.III, I-1. Ten of the petitioning organisations came from Dunedin. These included the local branches of the WCTU, YWCA and Women's Franchise League and the Baptist, Wesleyan, Presbyterian and Congregational churches. Only one petition proposed that the age be raised above that in Britain. Annie Schnackenberg, the national president of the WCTU, urged Parliament to raise the age to eighteen years.

³⁷ *NZPD*, 86, 1894, p.758. It is possible that better nutrition in New Zealand did result in girls reaching puberty earlier than their British counterparts.

³⁸ *Ibid.*, pp.981-982.

³⁹ *NZPD*, 92, 1896, p.660.

III

Debate in the New Zealand Parliament over the age of consent during the 1880s and 1890s centred around the vexed question of girls' personal responsibility for their sexual behaviour. By the 1880s sexual innocence or asexuality had become the principal defining characteristic of childhood in Western society. The central question plaguing the politicians was thus 'when did childhood, and therefore asexuality, end'?⁴⁰ When did a girl become a sexual being? In addition, when did she attain the maturity to understand the consequences of her actions? When did she cease to be a child in need of state protection and become a person responsible for her own sexual behaviour?

Advocates of a higher age of consent were in effect arguing for an extension of the concept of childhood. They argued that girls under sixteen lacked the maturity to consent to sexual activity: they were essentially children in need of guidance and protection.⁴¹ The feminist and social purity reformers endorsed a middle-class ideology which portrayed girls as naturally chaste and sexually passive. Girls' natural innocence and immaturity, they argued, left them highly vulnerable to the blandishments or threats of unscrupulous men. The reformers extended this ideology to cover working-class girls whose childhoods differed markedly from those of their more wealthy peers. Reformers argued that these girls would derive most benefit from the increased protection offered by a higher age of consent. An article in the *White Ribbon* in 1895 criticised Legislative Councillors' failure to acknowledge working class girls' vulnerability:

Our legislators in the Upper House are of the opinion that fifteen-year old girls should have knowledge and strength of character sufficient to protect themselves

⁴⁰ Finch, pp.79-80. See Finch, Chapter IV, for a detailed discussion of the evolution of the concept of childhood innocence.

⁴¹ *NZPD*, 1895, 88, p.215; *White Ribbon* 2:22 (April 1897), p.8.

from impure men of any age. We presume these honourable gentlemen think it necessary that their own daughters should be protected by chaperon or escort till considerably over that age. The fathers in a lower social scale are unable to exercise such care. Have we not a right to demand that the State step in, and provide protection for those who cannot reasonably be expected to protect themselves?⁴²

By raising the age of consent the state could protect girls whose working-class parents were either unable or unwilling to protect their daughters themselves.

Politicians who supported the demand for a higher age of consent also used the image of the sexually passive, vulnerable girl to promote their cause when debating the issue in Parliament. Councillor James Kerr argued in 1895 that 'They all knew the male was a rampagious individual, while the girls were quiet, retiring and modest'.⁴³ Henry Scotland emphasised the particular vulnerability of girls 'of weak intellect'. 'They ought not to suppose', he declared, 'every girl or young woman so prudent as to be able to protect herself. Experience showed the contrary was the fact'.⁴⁴ In 1896 elderly Councillor Dr M.S. Grace lent the weight of his medical opinion to the debate. Grace informed his colleagues that

physiologically, girls up to the age of sixteen very often had no commensurate sense of the danger which they underwent. And why? Because a great many of the girls had no sexual desire whatever, and no practical sensual knowledge. By practical sensual knowledge he meant that sensual knowledge which came to them from their inner instinct.⁴⁵

Dr Grace endorsed a medical view which considered women naturally sexually passive and men naturally sexually aggressive.⁴⁶ Those who accepted this view argued that girls who engaged in sexual activity only did so as a result of some weakness due to immaturity or mental deficiency.

⁴² *White Ribbon* 1:2 (August 1895), p.5. See also Gorham, 'Maiden Tribute', pp.357, 374.

⁴³ *NZPD*, 88, 1895, p.216.

⁴⁴ *Ibid.*, p.384. See also Tyler, pp.53-55.

⁴⁵ *NZPD*, 93, 1896, p.104.

⁴⁶ Grace argued during debates over equal divorce that same year that physiologically, men were more sexually driven than women. See Chapter II, p.57.

Girls under the age of sixteen were not sufficiently aware of the consequences of their actions and could not be held fully responsible for their sexual behaviour.⁴⁷ Raising the age of consent would help protect those unable to protect themselves.

Opponents of a higher age of consent resisted this attempt to extend the boundaries of childhood to include girls of fourteen and fifteen. They justified their stance on three main grounds. The first rested upon the assertion that different social conditions in New Zealand meant that a higher age of consent was not required in the colony. In Britain much had been made of the alleged involvement of elderly aristocratic rakes in the sexual violation of young girls.⁴⁸ Such considerations did not apply to the New Zealand situation as the colony lacked a distinct aristocracy closely associated with vice and decadence. 'Were they to be told in this age of enlightenment', asked the member for Ingham, R.H.J. Reeves, 'that they were to receive as laws the Acts passed by an effete country like England?'⁴⁹ The rejection of suggestions that New Zealand suffered from vices associated with the old world formed a significant theme in many of the debates over sex legislation in this period.

A second, and more significant, justification rested upon the belief the mild New Zealand climate led colonial girls to mature earlier than their British counterparts. The Legislative Council twice justified its continued opposition to reform on this ground in written statements to the House.⁵⁰ In Britain it was generally believed that most girls experienced first

⁴⁷ British and Australian reformers similarly portrayed girls as passive victims of male sexual abuse who were not responsible for their sexual activity: see Walkowitz, *Prostitution*, p.249; Tyler, p.55.

⁴⁸ Walkowitz, *Prostitution*, p.246.

⁴⁹ *NZPD*, 62, 1888, p.334.

⁵⁰ *NZPD*, 86, 1894, p.758; *NZPD*, 88, 1895, p.385.

menstruation by sixteen.⁵¹ Nevertheless, the 'age of puberty, as commonly understood in this colony,' the Council declared in 1895, 'is ordinarily fourteen years, or earlier'.⁵² Commentators in the Australian colonies similarly argued that their warm climates resulted in early puberty for girls.⁵³ However, reformers in New South Wales maintained that early physical maturity was not accompanied by a similar early development of mental maturity. Girls thus remained vulnerable and required the protection of a higher age of consent.⁵⁴ Reform-minded politicians in New Zealand similarly emphasised girls' emotional immaturity and sexual innocence. However, their opponents argued that New Zealand girls of fifteen years of age were sufficiently mentally mature to take responsibility for themselves. A 'girl of fifteen years,' declared the Council in 1895, 'knows the consequence of immorality as thoroughly as she is likely to know it at any later period'.⁵⁵ In other words, she was an adult.

The third major objection to the raising of the age of consent derived from the belief that many girls under the age of sixteen were not innocents led astray by designing men, but knowledgeable harlots or temptresses. Opponents of reform reversed the female victim/male offender scenario. During the debates they frequently related the age of consent question to

⁵¹ Deborah Gorham, *The Victorian Girl and the Feminine Ideal* (Bloomington: Indiana University Press, 1982), p.89.

⁵² *NZPD*, 88, 1895, p.385.

⁵³ Dr P.E. Muskett's *Illustrated Medical Guide: New Zealand Edition* (Wellington: 1903) (ATL) noted that menstruation could occur as early as twelve in Australia. In colder countries, he wrote, girls did not usually menstruate until their fourteenth or fifteenth years, p.93. Any lowering of the age of puberty was in fact more likely to be the result of improved nutrition than a change in climate.

⁵⁴ Finch, p.80.

⁵⁵ *NZPD*, 88, 1895, p.385. That same year a visiting English physician, Montagu Lomax-Smith remarked upon the differences between girls at 'home' and girls in the colony in an address to Christchurch women: 'I am aware that things are different in New Zealand to what they are at home. I am told that girls out here, even girls of quite tender age, are seldom without sex-knowledge, often of an advanced kind'. Lomax-Smith, *Woman in Relation to Physiology, Sex, Emotion, Intellect* (Christchurch: 1895) (ATL), p.33.

juvenile prostitution. They argued that increasing the age of consent would lead to entrapment and blackmail of boys and young men by precocious girls and young women.⁵⁶ Girls and young women were as much potential transgressors as they were victims. It 'was well known', declared Legislative Councillor George McLean in 1895, 'that there were those young girls who were continually enticing boys, and soliciting, and they should be punished as well'.⁵⁷ McLean's fellow Councillor Samuel Shrimski was of the same mind, noting that 'It always appeared to him a most extraordinary thing that a girl was to be looked upon as a suffering saint, while a boy of the same age was regarded as a criminal'.⁵⁸ In the eyes of opponents of reform, girls who initiated sexual activity were not children in need of protection but dangerous young harlots well able to look after themselves.

Politicians in Britain and Australia similarly objected to proposals to raise the age of consent on the grounds that it placed boys and men in danger.⁵⁹ In 1884 one member of the House of Lords remarked that 'very few of their Lordships ... had not, when young men, been guilty of immorality. He hoped they would pause before passing a clause within the range of which their sons might come'.⁶⁰ Such arguments were grounded in traditional patriarchal ideology which treated male immorality as a simple fact of life. The New Zealand Government responded to similar fears raised in the colonial Parliament by incorporating new protective

⁵⁶ Brookes, 'Weakness', pp.143-44.

⁵⁷ NZPD, 88, 1895, p.215.

⁵⁸ *Ibid.*, p.217.

⁵⁹ Gorham, 'Maiden Tribute', p.365; Tyler, pp.53-54; Barber, p.101; Judith Allen, *Sex and Secrets: Crimes involving Australian Women Since 1880* (Melbourne: Oxford University Press, 1990), p.78.

⁶⁰ *Hansard Parliamentary Debates* (Lords), 3d ser., 289 (24 June 1884, col. 1219), cited in Gorham 'Maiden Tribute', p.366.

clauses in the Criminal Code Bill of 1896. The new clauses shielded boys from sexual assault charges made by girls the same age or older than themselves.⁶¹

Debate during the mid-1890s over the age of consent coincided with debate over the repeal of the Contagious Diseases Act.⁶² It is significant that the Councillors who opposed a higher age of consent tended to be the same men who consistently opposed repeal of the Contagious Diseases legislation. Of the seventeen opponents of repeal who voted on the age of consent in 1894, thirteen opposed the proposed increase.

Table 4. Legislative Council: CD Act and Age of Consent Votes⁶³

	Opposed higher age	Supported higher age
Opposed repeal	13	4
Supported repeal	5	5

The most persistent opponents of a higher age of consent - George McLean, John Rigg, Samuel Shrimski, Edward Stevens and John Ormond - all supported retention and implementation of the Contagious Diseases Act.⁶⁴ Four of the five had also opposed women's suffrage.⁶⁵ The five Councillors staunchly resisted feminist attempts to shift the responsibility for seduction and

⁶¹ *NZPD*, 93, 1896, p.104.

⁶² See Chapter V, pp.185-217, for a detailed discussion of the repeal debates.

⁶³ The table includes all twenty-seven Councillors who voted on the Contagious Diseases Repeal Bills in 1895 or 1896 (or who did not vote but expressed a strong opinion during debate over the Bills) and who also voted on the age of consent in 1894. See *NZPD*, 88, 1895, p.277 and *NZPD*, 92, 1896, p.325 for CD Act repeal votes. See *NZPD*, 86, 1894, p.758 for Councillors' votes on raising the age of consent to sixteen. See Appendix II for a fuller list of Councillors' voting patterns.

⁶⁴ See Appendix II. See speeches by McLean, Rigg and Shrimski on repeal of the CD Act: *NZPD*, 88, 185, pp.220-221, 273-74; *NZPD*, 92, 1896, pp.324-25.

⁶⁵ Ormond was the odd one out.

juvenile prostitution onto men by raising the age of consent.⁶⁶ They supported a patriarchal ideology which suggested that rather than targeting male behaviour, the state should target female behaviour. They also resisted attempts to redefine fifteen and sixteen-year old girls as children rather than adults. Opponents of a higher age of consent who also supported implementation of the Contagious Diseases Act opposed a protective, child-focused strategy in favour of the older control strategy embodied in the Contagious Diseases legislation. Girls in their mid-teens were not children in need of protection but young adults who could be targeted alongside older prostitutes under the Contagious Diseases legislation.

Politicians recognised that raising the age of consent was one of the major goals of the feminist movement.⁶⁷ The advent of women's suffrage in 1893 certainly encouraged the reforming impulse within the House of Representatives. However, as was demonstrated during the Contagious Diseases Act repeal campaign, support for women's suffrage did not necessarily translate into support for other feminist goals.⁶⁸ Analysis of voting patterns in the Legislative Council in 1894 reveals that while most opponents of women's suffrage opposed raising the age of consent, a significant proportion of pro-suffrage Councillors also opposed increasing the age.

⁶⁶ The five men were the only Councillors who voted against raising the age of consent to sixteen in 1896: *NZPD*, 93, 1896, 93, p.105.

⁶⁷ *NZPD*, 83, 1894, p.176; *NZPD*, 93, 1896, p.104.

⁶⁸ See Chapter V, pp.206-07.

Table 5. Legislative Council: Age of Consent, Suffrage Votes⁶⁹

Age of Consent to 16	Pro suffrage 1893	Vs suffrage 1893
1894: pro increase	6	2
1894: vs increase	9	12

Two years later, pro-suffrage members of the House similarly balked at feminists' demands that the age of consent be raised beyond sixteen. A considerable proportion of pro-suffrage members opposed a proposal put forward in 1896 that the age be raised to eighteen years.

Table 6. House of Representatives: Age of Consent, Suffrage Votes⁷⁰

Age of consent to 18	Pro suffrage	Vs suffrage
1896: pro increase	9	1
1896: vs increase	15	4

Members of the House were prepared to accede to feminist demands so far, but no farther.

⁶⁹ The table includes all twenty-nine Councillors who voted on the third reading of 1893 Suffrage Bill and who subsequently voted on the age of consent in 1894 and 1896. Suffrage votes are taken from *NZPD*, 82, 1893, pp.80-81. 1894 votes are taken from Council discussion of amendments made to the Criminal Code Bill by the House of Representatives. The Council voted against an amendment which raised the age of consent to sixteen: *NZPD*, 86, 1894, p.758. 1896 votes are taken from the second reading of the Criminal Code Bill: *NZPD*, 93, 1896, p.105.

⁷⁰ This table includes the twenty-nine members whose opinions on suffrage are known and who voted on raising the age of consent to eighteen in 1896. No voting divisions in the House were recorded in 1889 or 1894. Suffrage positions are taken from several sources as records of members' votes on women's suffrage are sparse. Sources include the second reading vote in the 1893 Women's Suffrage Bill (*NZPD*, 80, 1893, p.549), opinions expressed during debates, a vote taken in 1891 (*NZPD*, 71, p.55) and references in Patricia Grimshaw, *Women's Suffrage in New Zealand*, 1st publ. 1972 (Auckland: Auckland University Press, 2nd ed., 1987), *passim*. See Appendix III for a fuller record of members' voting patterns. The 1896 statistics are from a vote taken in Committee regarding raising the age of consent to eighteen: *NZPD*, 92, 1896, p.660.

The campaign to raise the age of consent between the 1880s and mid-1890s owed as much to discourses on childhood as it did to specifically feminist discourse. Feminist and social purity lobbying added considerable weight to existing forces pushing for reform of the legislation. However, the principal force throughout the period was the general trend towards the extension of childhood: a trend apparent in parallel legislative initiatives concerning education and children's conditions of employment.⁷¹ Political debate over the age of consent laws focused upon defining the demarcation line between childhood (sexual innocence) and adulthood (sexual understanding). Girls' physiological development and intellectual maturity were central concerns. Growing acceptance of the belief that girls in their early teens were insufficiently mature to cope with men's sexual advances ultimately resulted in the raising of the age of consent from twelve to sixteen. The convergence of childhood and social purity-feminist discourses proved a major force for change. However, continued pressure from the women's organisations to raise the age still higher failed. By the mid-1890s fourteen had become generally accepted as the age at which a child became an adult.⁷² The politicians allowed girls a further two years to mature before becoming fully responsible for their own sexual actions. However, they proved highly resistant to feminist attempts to apply childhood discourse to girls over the age of sixteen.

IV

Although the age of consent campaign reached its legislative end in 1896, political concern over girls' sexual vulnerability continued, finding an outlet in alternative 'protective' strategies. In July 1896 anxiety over the prevalence of juvenile prostitution together with rising

⁷¹ See Graham, *passim*.

⁷² *Ibid.*, p.75.

concern over the behaviour of 'larrikin' boys prompted the Premier, Richard Seddon, to introduce the Juvenile Depravity Suppression Bill into Parliament.⁷³

The Bill contained three major provisions. Section 3 empowered the police to apprehend any girl under the age of seventeen found loitering in the streets or in out-of-the-way places after ten o'clock at night and who was believed to be there for 'improper purposes'. Girls apprehended were to be taken to another constable, or to the nearest Justice, clergyman or house of 'some married person of good repute', where they were to explain their reasons for being from home. If a girl was apprehended a second time and could not satisfactorily explain why she was not at home she could be taken before a Magistrate who had the power to commit her to a reformatory or industrial school.⁷⁴

Section 4 empowered the police to search 'at any time, without warrant ... any house, shop, building, or other premises occupied or frequented by Chinese, or by prostitutes,' or which they had reason to suspect was being used to harbour any girl under the age of seventeen for 'improper or immoral purposes'. The police were given the right to take any girls found there to the nearest police station.⁷⁵ Widespread belief in Chinese immorality and depravity led to the Bill's reference to premises associated with Chinese. Anti-Asian sentiment was particularly strong during the mid-1890s.⁷⁶ Seddon firmly believed in the 'evil propensities' and general undesirability of 'the Chinaman'. He introduced the Juvenile Depravity Suppression Bill hard

⁷³ 'Larrikin' was an Australian term used as a general label for troublesome youth: Shuker, p.219.

⁷⁴ Juvenile Depravity Suppression Bill, *Bills Thrown Out*, 1896, s.3.

⁷⁵ *Ibid.*, Section 4.

⁷⁶ On anti-Asian feeling, and the association made between Chinese and moral depravity, see Stevan Eldred-Grigg, *Pleasures of the Flesh: Sex and Drugs in Colonial New Zealand 1840-1915* (Wellington: A.H. & A.W. Reed, 1984), pp.15, 143; P.J. Gibbons, 'The Climate of Opinion', in Geoffrey Rice (ed.), *The Oxford History of New Zealand* (Auckland: Oxford University Press, 1992), p.310.

on the heels of a Bill intended to restrict Asian immigration to New Zealand. During his speech on the Asiatic Restriction Bill, Seddon referred to a recent scandals in Wellington and Dunedin concerning young girls and Chinese men and argued that the Chinese did 'not know what morality means'.⁷⁷

Section 5 authorised the police to search any premises associated with prostitution and gambling, 'or which [they had] cause to suspect to be frequented for gambling or other illegal or improper purposes' by boys apparently under the age of seventeen. Every boy found was to be taken to the nearest police station and dealt with in the same manner as the girls with the additional possibility of receiving a Magistrate-ordered whipping 'with not more than six strokes of a birch-rod by a constable'.⁷⁸

The Juvenile Depravity Suppression Bill addressed concerns raised by politicians and social reformers over the extent of independence allowed some young people by their parents. Legislative Councillor Samuel Shrimski had argued in 1895 that young people were granted too much freedom. He blamed the Shop-hours Act for the apparent rise in juvenile depravity:

On Sundays the parents had a certain amount of supervision over the children, because they sent them to church and Sunday-school, and so on; but during the week the girls and boys went out and enjoyed themselves; hence they had too much spare time, and, of course, they went out to some public gardens or to some place of entertainment ... He thought it was simply abominable to see young girls and boys going about the streets after dark.

Councillor W.C. Walker similarly argued that both sexes were 'exposed to dangers at an early age':

In town this arose largely from the fact that the young people seemed to have no idea of family life or pleasure after dark indoors.... He appealed most confidently to those who knew our big towns to admit that after dark there was an astonishing amount of youth and light character going hand-in-hand, apparently

⁷⁷ NZPD, 94, 1896, p.318.

⁷⁸ Juvenile Depravity Suppression Bill, *Bills Thrown Out*, 1896, s.5.

just merely to pass the time away. Of course, mischief came of it. Satan found some mischief still for idle hands to do.⁷⁹

The following year the Wellington branch of the Society for the Protection of Women and Children drew attention to the difficulties of preventing young girls from parading the streets during the evening. The Society argued that most cases of seduction it came across resulted from girls' practice of walking out at nights.⁸⁰ The Women's Christian Temperance Union similarly criticised the behaviour of 'giddy, light-mannered boys and girls who patrol arm-in-arm, giggling and shrieking' down public streets. 'Would it be possible', asked a *White Ribbon* correspondent, 'to fine parents and guardians who do not get their children in at a decent hour? Could we not have a Curfew Bell?'⁸¹ The scandals in Dunedin and Wellington referred to by Seddon further highlighted the alleged problem of juvenile depravity.⁸²

The concern expressed over 'juvenile depravity' or delinquent youth during the mid-1890s was neither new nor unique to New Zealand. John Gillis has argued that 'Public concern with juvenile delinquency has been a recurring phenomenon since at least the sixteenth century, with each successive cycle of anxiety manifesting new definitions of the problem'.⁸³ In Britain, social instability resulting from rapid urbanisation and industrialisation prompted the establishment of state-run industrial schools in 1857 to provide for the care and disciplining of 'vagrant, orphaned and morally endangered children'.⁸⁴ New Zealand followed suit a decade

⁷⁹ *NZPD*, 88, 1895, pp.216-17.

⁸⁰ NZSPWC (Wellington), *First Annual Report* (for 1896), (MSx 3292 Acc.91-163, ATL), pp.4-5.

⁸¹ *White Ribbon*, 1:12 (June 1896), p.6.

⁸² Seddon remarked upon these during his introduction of the Bill's second reading in the House: *NZPD*, 1896, 94, p.321.

⁸³ John Gillis, 'The Evolution of Juvenile Delinquency in England 1890-1914', *Past and Present*, no.67 (May 1975), p.96.

⁸⁴ Hopkins, pp.192-199.

later. Economic hardship, a high incidence of wife-desertion and a lack of private charity in the colony led to the introduction of the 1867 Neglected and Criminal Children Act.⁸⁵

The 1867 Act provided for the establishment of industrial schools and reformatories to cater for children under the age of fifteen who had committed offences punishable by imprisonment or who were 'found begging or receiving alms, frequenting public places, sleeping in the open air, and consorting with thieves, prostitutes, habitual drunkards or vagrants'.⁸⁶ Committal to an industrial school or reformatory could stretch from one to seven years. A girl or boy committed at the age of fourteen might reach twenty-one years of age before being released from the control of the school or reformatory authorities.⁸⁷

The 1896 Juvenile Depravity Suppression Bill constituted an attempt to extend state controls over girls aged fifteen and sixteen who, because of their age, did not fall under the auspices of the industrial schools legislation.⁸⁸ Mid-1890s concern over girls' sexual vulnerability (highlighted by supporters of a higher age of consent) and their sexual precocity (emphasised by some opponents of a higher age of consent) encouraged reformers and politicians to consider new ways of protecting, or controlling, girls. However, the Bill demonstrated a significant broadening of official concern over juvenile immorality. Prior to 1896, politicians discussed the problem almost exclusively in terms of female sexual precocity

⁸⁵ Beagle, pp.136-137.

⁸⁶ Tennant, *Paupers and Providers*, p.128. Neglected and Criminal Children Act, *NZ Statutes*, 1867, s.12. See Beagle for a full discussion of the origins of the industrial school system in New Zealand, pp.10-38.

⁸⁷ In 1890 the Government attempted to raise the committal age limit from fourteen to seventeen for girls found residing in brothels or associating with prostitutes, drunkards or vagrants. However, the bid failed amidst protests that girls of seventeen could not be considered children in need of protection: *NZPD*, 67, 1890, pp.262-64, 346-350, 435-439, 528.

⁸⁸ In 1880 the administration of the industrial schools passed from the Justice Department to the Education Department. Beagle, p.22. The 1882 Industrial Schools Act retained fourteen as the upper age limit for the committal of a child.

or vulnerability. The targeting of boys under the age of seventeen found in brothels or gambling dens marked a significant new interest in the moral welfare of boys. Although the anti-social activities of male 'larrikins' had attracted comment since the 1870s, it was not until the 1890s that their behaviour seriously interested politicians.⁸⁹ It also appears that notwithstanding the provisions of the industrial schools legislation, many 'uncontrolled' children aged under fourteen had escaped its reach. From the mid-1890s reformers and politicians alike noted the presence of very young children on city streets at late hours.

The Juvenile Depravity Suppression Bill inspired a lengthy debate in the House of Representatives. Although members of the House generally agreed with Seddon that juvenile depravity was a significant problem, they took issue with several of the Bill's provisions. Several members argued that the Bill went too far. Dr A.K. Newman and G.W. Russell compared the proposed legislation to the unpopular Contagious Diseases Act. Both opposed giving policemen such extensive powers over the young.⁹⁰ George Hutchison argued that the Bill did not go far enough. Hutchison urged Seddon to extend section 3 to cover boys as well as girls. The 'Premier might depend on it', he declared, 'if he cleared the streets of the male larrikin he would not be greatly troubled with the female one'.⁹¹ Thomas Mackenzie opposed

⁸⁹ D.A. Gregory, 'Saving the Children in New Zealand: A Study of Social Attitudes Towards Larrikinism in the Later Nineteenth Century' (B.A. (Hons.) Research Essay, Massey University, 1975), pp.4-10; Roy Shuker, 'Moral Panics and Social Control: Juvenile Delinquency in Late Nineteenth Century New Zealand', in R. Openshaw & D. McKenzie (eds.), *Reinterpreting the Educational Past: Essays in the History of New Zealand Education* (Wellington: NZ Council for Educational Research, 1987), pp.123-124. See also Richard Hill, *The Iron Hand in the Velvet Glove: The Modernisation of Policing in New Zealand, 1886-1917* (Wellington: Dunmore Press/New Zealand Police/Historical Branch, Department of Internal Affairs, 1995), pp.21-22.

⁹⁰ NZPD, 94, 1896, pp.321-322.

⁹¹ *Ibid.*, p.324.

the targeting of all Chinese in the Bill. Mackenzie, the member for Clutha, reminded his colleagues that

in the City of Dunedin ... there were some very respectable Chinese merchants - most respectable persons - and it seemed to him that, to allow a policeman to walk into houses of these citizens, without a warrant, or without authority, was rather too much.⁹²

Despite these objections the Bill passed its second reading in the House. Members of the House accepted the general argument that something ought to be done to combat juvenile depravity. However, the Bill was later discharged. Differences over detail outweighed widespread approval of the proposed legislation.

In 1897 Seddon referred an amended version of his 1896 Bill, re-named the Young Persons' Protection Bill, to a Select Committee for comment. The Bill contained several significant new clauses. The first of these provided for the appointment of 'discreet women' to act as protection officers in place of the police.⁹³ Criticism of the 1896 Bill's similarity to the Contagious Diseases Act had evidently struck home. A further two new sections addressed the responsibility of parents to control and protect their children. Sections 8 and 11 of the Bill imposed fines or imprisonment upon parents deemed neglectful of their children or who had induced or allowed their daughters 'to have illicit carnal connection with any man, whether any particular man or generally'.⁹⁴

The Young Persons' Protection Bill Committee solicited evidence from the leading clergy and rescue associations in Auckland, Wellington, Christchurch and Dunedin on the

⁹² *NZPD*, 94, 1896, p.328.

⁹³ First offenders were to be taken home. Apprehension a second time could lead to committal to an institution.

⁹⁴ Young Persons' Protection Bill, *Bills Thrown Out*, 1896, s.3 (1), s.8 & s.11.

extent and causes of juvenile depravity in their towns.⁹⁵ The Committee also received reports on prostitution and the Contagious Diseases Act from magistrates, the police and hospital medical officers.⁹⁶ Reports supplied to the Committee identified a range of activities considered to fall under the heading of 'juvenile depravity'. Commentators discussed the incidence of prostitution and gambling but also referred to 'rowdyism', general 'looseness of manner', incest and illegitimacy. They identified several causes of depravity, ranging from parental laxity and poor environments to the influence of obscene and bad literature. A significant number of respondents also argued that the problem was increasing 'out of all proportion to increase of population' although several commentators felt less certain on this point.⁹⁷

The Committee ultimately concluded that juvenile depravity did indeed exist in the community and recommended that the Bill proceed.⁹⁸ However, it suggested that several changes be made to the proposed legislation: it extended the provisions concerning girls loitering on streets to cover all 'young persons' under the age of seventeen; boys as well as girls would have to justify their presence on the streets 'at unreasonable hours'; objections made to the targeting of Chinese led to the deletion of the phrase allowing police to search the premises of Chinese at any time without a warrant; and suggestions from several women's organisations

⁹⁵ Evidence Taken by the Young Persons Protection Bill Committee, Confidential to Members of the NZ House of Representatives, Session II, 1897 (ATL), *passim*. The 'rescue organisations' included the Women's Christian Temperance Union, The Society for the Protection of Women and Children, the Southern Cross Society, the Women's Political League and the Gisborne Women's Political Association.

⁹⁶ Prostitution and the Contagious Diseases Act (Reports from Stipendiary Magistrates, Inspectors of Police, and Medical Officers of Hospitals, 1897) from Evidence Taken by the Young Persons Protection Bill Committee, Confidential to Members of the NZ House of Representatives, Session II, 1897 (ATL).

⁹⁷ Evidence - 1897 Young Persons' Protection Bill Committee, *passim*.

⁹⁸ NZPD, 100, 1897, p.7.

that whipping hardened rather than reformed boys led to the deletion of the section providing for corporal punishment.⁹⁹

The amended Bill successfully passed through all stages in the House of Representatives only to be rejected by the Legislative Council. The Council similarly opposed Young Persons' Protection Bills in 1899, 1900, 1901 and 1902. However, the Council's reluctance to pass the Bills failed to deter reformers in the House of Representatives and the annual reintroduction of the Bills between 1899 and 1902 ensured that the question of juvenile depravity was regularly and extensively debated.

Debate over the Bills during the late 1890s and early 1900s revealed deep concern over family stability. Commentators considered the presence of young people on the streets late at night evidence of family breakdown.¹⁰⁰ Middle-class idealisation of the family as the foundation of a healthy society and a bulwark of morality led to fears that decay of the family heralded national decay and degeneration.¹⁰¹ J.A. Hanan, a strong supporter of the Bills, focused on this during debate in the House in 1901:

Every society necessarily reserves to itself the right to control the lives of those who endanger the common weal. It is the duty of the State to do all that is possible to insure our young people being trained to become good and useful citizens, upon the presence of which depends the future welfare of the country. It cannot be denied that frequently the evils which we have heard so much about

⁹⁹ Evidence - 1897 Young Persons' Protection Bill Committee, pp.5-7. 1897 Young Persons' Protection Bill [As Reported from the Young Persons' Protection Bill Committee, 16th November, 1897], s.5 & p.4.

¹⁰⁰ Women's increased participation in the workforce and politics were connected to declining parental controls. See Shuker, pp.125-126.

¹⁰¹ On the idealisation of family life and the cult of domesticity in New Zealand, see Erik Olssen & Andr  e L  vesque, 'Towards a History of the European Family in New Zealand', in P.G. Koopman-Boyden (ed.) *Families in New Zealand Society* (Wellington: Methuen, 1978), pp.6-9. See also Carol Bacchi, 'Evolution, Eugenics and Women: the Impact of Scientific Theories on Attitudes towards Women, 1870-1920', in Elizabeth Windschuttle (ed.), *Women, Class and History: Feminist Perspectives on Australia 1788-1978* (Sydney: Fontana/Collins, 1980), pp.133-134.

this evening spring from the want of supervision in the home, from the absence of exercise of parental control, and from the state of domestic religion.... To secure a salutary control over children of tender years, and whose parents are not alive to their parental responsibilities - to remove children from evil associations and bad environments - in other words, to improve socially and morally children whose proper bringing up was or is neglected, are objects of the highest commendation. Wherever juvenile depravity or vice exists to any extent, it must have the effect of sapping the very foundations of national life.¹⁰²

Where parents failed to take responsibility for their offspring the state had a duty to intervene for the sake of the child, the community and the nation.

Although reformers chiefly attributed juvenile depravity to parental laxity, they also discussed a range of other contributing factors. Some blamed late night loitering on the colony's mild climate.¹⁰³ Australian commentators made similar claims about their own larrikin problem. 'The rigour of a winter climate in the old country', remarked the *Sydney Morning Herald*, 'compelled an indoor life for children in certain periods of the year; but here the boys get away into the streets ...'.¹⁰⁴ Others blamed juvenile depravity and larrikinism on poverty, poor housing and a lack of home comforts. 'In some degree', argued Legislative Councillor George Jones in 1899, the problem 'is consequent on our social conditions.'

People are poor and live in small houses, and they have large families, and have no interesting occupations in the evenings; and even if they had they have no place to sit where they can be quiet and enjoy themselves. Under such circumstances, the parents and guardians are glad to get rid of the children, and the children are glad to get rid of their parents and guardians, and they go into the streets and become wanton, not knowing where to go and what to do.¹⁰⁵

¹⁰² NZPD, 117, 1901, p.409.

¹⁰³ NZPD, 94, 1896, p.328; NZPD, 111, 1900, p.422.

¹⁰⁴ *Sydney Morning Herald*, 20 Sept, 1886, cited in David Walker, 'Youth on Trial: The Mt Rennie Case', *Labour History*, no.50 (1986), p.32.

¹⁰⁵ NZPD, 108, 1899, p.255.

Reports to the 1897 Select Committee similarly commented upon inadequate housing and a poor home life.¹⁰⁶ Jones suggested that the state combat juvenile depravity by establishing places where young people could go for wholesome instruction or entertainment.¹⁰⁷ However, other politicians and commentators argued that existing evening meetings, including those meetings run by religious organisations, had significantly contributed to the problem by drawing youngsters away from their homes in the first place.¹⁰⁸

Economic depression and increased urbanisation during the later decades of the century no doubt contributed to the housing and social problems blamed for larrikinism and juvenile depravity.¹⁰⁹ However, despite the obvious concern over juvenile immorality and delinquency there is little evidence to show that the level of concern was justified.¹¹⁰ Statistical evidence indicates an increased eagerness to prosecute for minor offences rather than an actual increase in unruly or immoral behaviour.¹¹¹ A number of politicians at the time also disputed allegations that juvenile vice was significant or that it was increasing. Young people, declared Legislative Councillor Thomas Kelly, had been 'grossly slandered by irresponsible scandal-mongers'.¹¹²

¹⁰⁶ Evidence - 1897 Young Person's Protection Bill Committee, p.2.

¹⁰⁷ *NZPD*, 108, 1899, p.255. See also Shuker, p.127.

¹⁰⁸ *NZPD*, 88, 1895, p.216; *NZPD*, 94, 1896, p.328. Evidence - 1897 Young Person's Protection Bill Committee, p.6.

¹⁰⁹ Gregory, pp.3, 37; Beagle, pp.42-44, 204-06. The depression conditions of the 1880s returned during 1894 and 1895: John E. Martin, 'Unemployment, Government and the Labour Market in New Zealand, 1860-1890', *NZJH*, 29:2 (October 1995), p.185. Shuker notes, p.127, that discrepancies between the provision of the School Attendance Act of 1894 and the Factories Act of the same year contributed to the problem. Children could leave school at thirteen but could not be employed in factories until they reached fourteen years of age: 'Many larrikins were thus simply youths passing time until they were able to enter employment'.

¹¹⁰ Gregory, p.15.

¹¹¹ *Ibid.*, p.11.

¹¹² *NZPD*, 100, 1897, p.833; see also comments made by Dr Grace and George Mclean, pp.834-35.

Even W.C. Walker, the most fervent supporter of the Young Persons' Protection Bills in the Council, commented regretfully upon the aura of panic surrounding the issue.¹¹³

Public over-reaction to the problem of juvenile depravity was partly symbolic. Condemnation of larrikinism and youthful immorality helped reinforce middle-class values concerning the virtues of social order and the sanctity of family life. The outcry against juvenile depravity was partly an attempt by middle-class reformers to establish their ethic of respectability as the norm.¹¹⁴ Anglo-Saxon elites felt defensive during the late nineteenth century. As Carol Bacchi has argued,

Britain's imperial supremacy seemed a thing of the past and the degeneracy of the race became a popular topic of debate. The foundations of a stable social order were under assault. Darwin challenged a God-directed universe; the working classes were organizing on their own behalf.... The Victorian faith in the perfectibility of man seemed at best a little shaky. In this situation the virtues of family life, the cornerstone of the social order were lauded.¹¹⁵

Middle-class reformers' fears of social disorder and moral decay encouraged an intense examination of family and social life. This closer scrutiny inevitably exposed what middle-class reformers saw as weaknesses in the domestic and social fabric of working-class lives. Reformers had a clear vision of what family life ought to be: uncontrolled and overly independent children and youths formed no part of that vision. The attempt to impose a curfew upon the young by threatening them with institutionalisation, and their parents with fines and possible imprisonment, formed part of a wider middle-class campaign to encourage working-class parents and their children to abide by middle-class norms. The moral panic generated by reformers legitimated underlying social control imperatives.¹¹⁶

¹¹³ *Ibid.*, p.832.

¹¹⁴ Shuker, pp.129-130. See also Platt, p.177.

¹¹⁵ Bacchi, p.133.

¹¹⁶ Shuker, p.122.

New Zealand's transition from a frontier society to a more settled society helped give rise to higher expectations of social order. The rise of the social purity movements heightened these expectations and increased political willingness to intervene in the lives of the public encouraged campaigns against disorderly behaviour. Many commentators within and outside Parliament expected a higher standard of conduct from the young and their parents. The campaign against juvenile depravity represented a rejection of frontier disorder in favour of post-frontier tranquillity and respectability.¹¹⁷

The late nineteenth-century extension of childhood also contributed to the moral panic over juvenile depravity. Reformers sought to protect ever-older boys and girls from the dangers of the streets. The stated desire to 'protect' the young had much to do with a desire to control their behaviour. The reformers, adherents of a middle-class ideology which emphasised children's dependency upon parents and guardians, wished to impose the same controls on working-class children as they imposed upon their own offspring. Anthony Platt has argued that in America the 'child savers were more concerned with restriction than liberation'. They were

prohibitionists in a general sense who believed that social progress depended upon efficient law enforcement, strict supervision of children's leisure and recreation, and the regulation of illicit pleasures. Their efforts were directed at rescuing children from institutions and situations ... which threatened their 'dependency'.¹¹⁸

New Zealand's child savers were similarly motivated. Guided by their fervent beliefs in the need for youthful submission to their own middle-class social purity values and desirous of including ever-older girls and boys in their net, the child savers largely drove the moral panic surrounding juvenile depravity in the 1890s and early 1900s.

¹¹⁷ See Hill, pp.1-3, 15-16, 20-23.

¹¹⁸ Platt, p.99.

The reformers' desire to interfere in the lives of 'careless' parents and their offspring did not meet with the wholehearted approval of all politicians. While all agreed that the family formed the bedrock of the nation, not all agreed that state interference in the family would have positive results. Undue state interference in the domestic circle, some argued, would undermine rather than strengthen family life. Opponents of the Bills displayed considerable suspicion of the ability of state agents - whether policemen or 'discreet women' - to deal sensibly or sensitively with young people and their families. Legislative Councillor David Pinkerton spoke for a number of his colleagues in 1899 when he criticised the Young Persons' Protection Bill of that year:

One of the bad features of this Bill is that the police are to be the sole judges of what "loitering" means ... and it might be a very serious thing if a young girl or lad who was out after nine at night was liable to be taken in charge by a policeman, as all sorts of consequences might follow.... I may be told that a man of common-sense would not abuse that power, but ... I know of a case where a young girl was put into the lock-up and charged with drunkenness, while the Inspector of Police ten minutes afterwards said positively she was sober. That is an instance of what a policeman may do.... Besides, suppose the policeman, through some indiscretion, arrested a young girl and took her home to her parents and found there was nothing wrong, the mere fact of her being taken home by a policeman would leave a stain on her character for a lifetime.¹¹⁹

Other opponents of the proposed legislation made similar claims. Clumsy, incompetent or over-zealous policemen could not be trusted to deal appropriately with young girls.

The distrust of the police displayed in debates over the Young Persons' Protection Bills formed part of a wider public debate over the reliability and capability of the police force during these years. Widespread criticism of the police resulted in a Royal Commission of Inquiry into the police in 1898. Despite the findings revealing that 'taking the Force as a body' it came out 'remarkably well', politicians continued to question the ability of the ordinary policeman to

¹¹⁹ NZPD, 110, 1899, p.168.

judge whether a girl ought to be apprehended under the proposed Young Persons' Protection Bills.¹²⁰

Although the 1897 Select Committee proposed that 'discreet women' be appointed in place of the police, this suggestion also encountered fierce opposition from opponents of the curfew Bills. Legislative Councillor Samuel Shrimski, no friend to the feminists, argued vigorously against the appointment of women as protection officers.¹²¹ 'We know perfectly well what women are with matters of this kind placed in their hands', he declared. 'It would be a weapon which very likely would be arbitrarily and oppressively used, to the great annoyance of many respectable persons'.¹²² Dr Grace similarly warned against women's abuse of their powers. Under the proposed legislation, he argued, 'a vicious minded "discreet" woman can ruin the domestic happiness of a whole circle, because a little girl is out at ten o'clock on a moonlight [*sic*] night'.¹²³ George Fisher, member for Wellington, spoke at length in 1901 against 'petticoated termagants who seem anxious to jostle with the midnight rabble'.¹²⁴ Several other vocal politicians in each chamber also explicitly rejected feminist and social purity attempts to use the state to promote their own moral agendas.¹²⁵

¹²⁰ Hill, pp.81-90.

¹²¹ Shrimski voted against women's suffrage in 1893 and had also opposed the raising of the age of consent in 1894 and 1896.

¹²² *NZPD*, 108, 1899, pp.257-58.

¹²³ *NZPD*, 111, 1900, p.485.

¹²⁴ *NZPD*, 117, 1901, pp.402, 405. Grace and Fisher had also opposed women's suffrage.

¹²⁵ Legislative Councillors were more vocal on this point than their colleagues in the lower chamber. See, in particular, speeches made during debate of the Young Persons Bills by Councillors George Mclean, Thomas Kelly, Samuel Shrimski and Henry Feldwick. See also speeches delivered by MHRs George Fisher and Thomas Wilford *NZPD* 1897-1901. The four Councillors had already demonstrated their general opposition to feminist initiatives in their opposition to the female suffrage and in their reluctance to repeal the Contagious Diseases Act and raise the age of consent.

Politicians' reluctance to support the Young Persons' Protection Bills also stemmed from concern that the proposed legislation interfered with personal freedoms.¹²⁶ Supporters of the proposed legislation clearly felt defensive on this point. Seddon himself noted in 1896 that some might consider his Juvenile Depravity Suppression Bill 'an unwarrantable interference with the liberty of the subject'.¹²⁷ However, Legislative Councillor W.C. Walker reminded his colleagues in 1899 that an excess of liberty allowed young people could only too easily degenerate into 'license'.¹²⁸ Young people, he declared, already lived under restrictions designed to protect them from harm:

what young people under the age of sixteen are the masters or mistresses of their own actions in the full sense of the words? Are they not regulated in every action of their life? Does not the law say they are incapable of doing certain things? Does not the law say they are not even masters or mistresses of their own morality? It is absurd to say we are interfering with the liberty of the subject because we have a measure dealing with young people of these years which is for their benefit, and for the benefit of their parents, and for the benefit of future generations; and therefore I think we need not lay too much stress on the objection that it interferes with the liberty of the subject.¹²⁹

Debate over the Bills tended to emphasise the need to both protect and control the young rather than any need to defend their rights to freedom of movement. Seddon, Walker and their supporters clearly accepted the extension of childhood promoted by the child-savers, feminists and social purity reformers. Youngsters aged sixteen and under could not be allowed full freedom of movement. They lacked the maturity to take responsibility for their own actions. If parents failed to control their vulnerable or wayward offspring then the state must take action.

¹²⁶ *NZPD*, 108, 1899, p.258.

¹²⁷ *NZPD*, 94, 1896, p.320.

¹²⁸ *NZPD*, 108, 1899, pp.253-54.

¹²⁹ *Ibid.*, p.258. The 1899 Bill defined 'young person' as 'a boy or girl apparently not over the age of sixteen years'. Walker ought to have referred to young people under the age of seventeen in his speech.

Similarities between the Young Persons' Protection Bills and the 1869 Contagious Diseases Act did not go unnoticed by politicians. Both proposals provided for the apprehension and detention of girls who appeared to be involved in prostitution. In 1896, members of the House had criticised Seddon's Juvenile Depravity Bill on the grounds that it resembled the unpopular Act.¹³⁰ Some Councillors also made similar criticisms.¹³¹ However, it should not be assumed that supporters of the Act necessarily supported the Bills and vice versa. Analysis of Legislative Councillors' voting patterns reveals that five of the thirteen Councillors who supported the repeal of the Contagious Diseases Act also supported the enactment of the Young Persons' Protection Bills.¹³² Of the twenty-seven Councillors who opposed repeal of the Contagious Diseases Act, nine opposed the curfew Bills and ten voted in favour of their introduction.

Table 7. Legislative Council: CD Act and YPP Bill Vote Correlations¹³³

	Pro YPP Bills	Vs YPP Bills	Change mind	Opinion not known
Pro CD Act Repeal (13)	5	2	2	4
Vs CD Act Repeal (27)	10	9	5	3

¹³⁰ *NZPD*, 94, 1896, pp.321-322.

¹³¹ *NZPD*, 110, 1899, pp.276-77.

¹³² The battle over the repeal of the Contagious Act had already been won in the House of Representatives.

¹³³ The table includes all forty Councillors who voted on the second readings of the 1895 and 1896 CD Act Repeal Bills. Dr Daniel Pollen did not cast a vote but is included because he stated his position very clearly during debate on the 1895 Bill: See *NZPD*, 88, 1895, p.277 and *NZPD*, 92, 1896, p.325 for the Councillors' votes. Councillor's positions on the Young Persons' Protection Bills are taken from a range of votes taken and speeches made on the Bills between 1897 and 1902. See also Appendix II.

Some Councillors, notably George Mclean and Thomas Kelly, opposed the Bills on the grounds that the Contagious Diseases Act would be more effective in suppressing juvenile prostitution.¹³⁴ Others opposed the Bills for the same reasons that they opposed the Contagious Diseases Act.¹³⁵ Still others supported the Bills as a useful alternative to the defunct contagious diseases legislation.¹³⁶

Given the similarities of the Young Persons' Bills to the detested Contagious Diseases Act, why did organisations such as the Society for the Protection of Women and Children and the Women's Christian Temperance Union give their support to the Bills? Feminist and social purity support for the Bills rested upon fundamental beliefs in children's dependency and vulnerability and in their own duty to purify society. They adhered to an ideology which held that 'subordination was the duty of the young and moral guardianship was the duty of the adult and more powerful members of society'.¹³⁷ Children and 'young people' - defined as those aged sixteen and under - formed a very different category from the women targeted by the Contagious Diseases Act. As W.C. Walker argued, in view of their immaturity and vulnerability, young people's liberty had to be curtailed. Replacement of the police in the Bills with 'discreet women' further distinguished the legislation from the Contagious Diseases Act. Women's 'natural' maternal instincts could be directed out into the public arena via the proposed legislation. Unlike the Contagious Diseases Act the Young Persons' Protection Bills would operate for the benefit of those targeted. Protection, not punishment, was the aim. Feminists ignored the

¹³⁴ *NZPD*, 100, 1897, pp.833-34.

¹³⁵ *NZPD*, 110, 1899, p.276. Councillor James Kerr argued that apprehension under either piece of legislation would compromise girls' reputations even if they were later proved virtuous.

¹³⁶ *NZPD*, 100, 1897, p.835.

¹³⁷ Gorham, 'Maiden Tribute', p.371.

coercive implications of their 'protective' campaigns for the young.¹³⁸ Their devotion to the cause of social purity encouraged them to use all resources, including restrictive legislation, to impose their moral code upon all citizens - men, women and children.

The curfew campaign reiterated some of the arguments heard in the age of consent campaign. Commentators continued to describe young girls as either innocent victims or precocious tarts. The Society for the Protection of Women and Children and the Women's Christian Temperance Union saw the proposed legislation as a protective measure to stop respectable girls from falling into evil ways. In this, they continued to uphold the image of the vulnerable, respectable young female which featured in the age of consent campaign. However, the reformers' increased focus on the behaviour of girls rather than on that of men distinguished the curfew campaign from the campaign to raise the age of consent. Girls were perceived as placing themselves at risk by entering public space unprotected at night. Respectable girls could also be foolish girls. Men who took advantage of them could be penalised under the 1896 age of consent legislation. But advocates of the curfew Bills wanted girls themselves placed under state restriction for their own safety and welfare.

Within parliament the good girl and bad girl images were used on both sides of the debate. Some supporters took the line of the social purity reformers, arguing that the proposed legislation was needed to prevent innocent but foolish girls from taking the first steps towards a life of degradation. Other advocates of a curfew saw the bills primarily as a means of clearing the streets of 'bad' girls.¹³⁹ Opponents of the bills used the dual images of girls to a different effect. They argued that respectable girls were highly likely to be apprehended by mistake and

¹³⁸ *Ibid.*, pp.364-66; Walkowitz, *Prostitution*, p.249.

¹³⁹ *NZPD*, 100, 1897, p.835.

would consequently suffer public shame and humiliation. Bad girls, they contended, would be better dealt with under the old Contagious Diseases Act.¹⁴⁰ However the dual images were used, whether set at cross purposes or combined to support one position, the major significance of the curfew campaign lay in its attempt to impose restrictions on girls rather than on those who sought their sexual services. The respectable girl who endangered her moral status by loitering in the streets and the girl who had already fallen from grace were both targets of the proposed restrictive legislation.

Despite seven years of vigorous debate over the existence of juvenile depravity in the colony and over the best means of policing it, the curfew campaign died away in 1902. Procedural issues had proved highly contentious and may have led to the abandonment of the campaign. The politicians simply could not agree on who would police the curfew and on whether it would apply to the whole country. By 1901 both parliamentary chambers had expressed strong support for main principle behind the curfew, but there was a lack of consensus over the fine details. Most agreed that something should be done to regulate unruly and immoral youth but not all could agree that the curfew bill, as it stood, was the best solution. Legislative Councillor W.C. Walker, the man who had largely kept the issue alive between 1899 and 1902, ended his term as the Government's Council representative in 1903 and died the following year.¹⁴¹ His absence, together with seven years of fruitless wrangling over details, may have encouraged Seddon to abandon the campaign, turning to other means of controlling the young. It is likely that reorganisation of the industrial schools system in 1900 contributed to the abandonment of the Young Persons' Protection Bills. Questioned on the likelihood of

¹⁴⁰ *Ibid.*, pp.833-34.

¹⁴¹ J.O. Wilson, *New Zealand Parliamentary Record* (Wellington: Government Printer, 1985), pp.73, 166.

reintroduction of a Young Person's Protection Bill in 1903, the Premier answered that recently enacted truancy legislation would better serve the purpose.¹⁴²

V

The demise of the curfew campaign failed to dampen the ardour of child-saving feminist and social purity reformers. Reformers continued to lobby the Government to implement a range of 'protective' strategies. The Women's Christian Temperance Union annually lobbied Parliament until 1913 - without success - to introduce an evening curfew for young people. The Union also continued to campaign for a higher age of consent for girls.¹⁴³ The Society for the Protection of Women and Children similarly urged the Government to raise the age of consent to at least eighteen to help combat cases of seduction and youthful prostitution.¹⁴⁴

From the early 1900s the two organisations also increasingly campaigned for the introduction of women police to help protect the young.¹⁴⁵ The feminists and the purity reformers had very much approved the replacement of policemen with 'discreet women' in the Young Persons' Protection Bills.¹⁴⁶ They argued that the problem of juvenile depravity was essentially a 'woman's question'. Women's special natures meant that they were better suited than men to handle problems involving women and children.¹⁴⁷

¹⁴² NZPD, 123, 1903, p.763. The Premier was referring to sections 15 to 20 of the School Attendance Act, 1901.

¹⁴³ WCTU Minutes, National Convention, Nelson, 12 March 1913 (MS Papers 79-057-09/11, ATL).

¹⁴⁴ NZSPWC (Wellington), *Annual Reports*, 1903-1917 (MSx 3292 Acc.91-163, ATL).

¹⁴⁵ *Ibid.* The Women's Christian Temperance Union became particularly vocal on the question of women police after 1914. Between 1914 and 1917 almost every issue of the *White Ribbon* carried some reference to women police. See the *White Ribbon* 20:238 (April 1915), p.10; 22:253 (July 1916), p.9; 22:257 (November 1916), pp.9-11; 22:258 (December 1916), pp.5, 9.

¹⁴⁶ *White Ribbon* 2:14 (August 1896), p.3

¹⁴⁷ *White Ribbon* 2:15 (September 1896), p.7. WCTU Minutes, National Convention, Wanganui, 22 March 1916. The Union suggested that women detectives be appointed 'in the

The reformers couched their requests for women police, women justices and jurors in terms of women's natural maternal mission. From the start of the women's movement feminists had used prevailing ideologies about women's domestic and maternal virtues to legitimise women's participation in public life. They argued that it was the 'peculiar mission' of women to defend home, family and community.¹⁴⁸ During the early 1900s women's organisations placed a new emphasis upon women's maternal role. Concern over the declining birth-rate and the quality of the population encouraged a new preoccupation with women as mothers of the nation.¹⁴⁹ The reformers used this new emphasis upon women's maternal caring role to argue that women could also play a role outside the home. In 1916 the Women's Christian Temperance Union endorsed a declaration by an overseas feminist that 'the most valuable gift that women [could] bring to the service of their country ... [was] this passion of motherhood. We believe that we need mothers in politics, and that the whole human race is crying to be mothered'.¹⁵⁰ Women's traditional role as the guardians of morality and their natural maternal

interests of morality, to detect and organise means to detect attempts to decoy or entrap young girls for immoral purposes': WCTU Minutes, National Convention, Nelson, 12 March 1913.

¹⁴⁸ Feminists initially used this argument to justify women's suffrage rather than demand that women be appointed to public positions. See Raewyn Dalziel, 'The Colonial Helpmeet: Women's Role and the Vote in Nineteenth-Century New Zealand', *NZJH* 11:2 (October 1977), *passim*. Walkowitz, *Prostitution*, pp.117, 131; Susan Kingsley Kent, *Sex and Suffrage in Britain, 1860-1914* (Princeton: Princeton University Press, 1987), p.91; Jane Lewis (ed.), *Labour and Love: Women's Experience of Home and Family, 1850-1940* (Oxford: Basil Blackwell, 1986), p.89.

¹⁴⁹ Dorothy Page, *The National Council of Women: A Centennial History* (Auckland: Auckland University Press/Bridget Williams Books with the National Council of Women, 1996), p.47.

¹⁵⁰ The woman quoted was Dorothy Dix, a suffrage campaigner: *White Ribbon* 22:258 (December 1916), p.4. See also 23:266 (August 1917), p.1, and Bronwyn Dalley, 'From Demi-Mondes to Slaveys: Aspects of the Management of the Te Oranga Reformatory for Delinquent Young Women, 1900-1918', in B. Brookes *et al* (eds.), *Women in History II: Essays on Women in New Zealand* (Wellington: Bridget Williams Books, 1992), p.152.

concern for children could be utilised in the public sphere through the introduction of women police, jurors and justices.

The feminists also argued that social changes justified the introduction of women police. In an article in the *White Ribbon* in 1916 the Union noted that the 'conditions of modern life' - in particular, girls' increased participation in public life (travel to shops and places of work) - had made it much more difficult for parents to control older children. The writer posed the question of how girls could best be protected:

Would we go back to the days when girls spent their time bending over fancy work in almost harem-like seclusion: Certainly not; the age of the chaperon has passed, but alas! The age of the self-respecting girl has not yet fully dawned. How can we protect them? With singular unanimity, magistrate, jury, probation officer, Education Board, and social reformer are asking for women police.¹⁵¹

Feminist and purity organisations pointed to the examples of other countries who had introduced women police. Britain and Australia had acted on this matter: why did New Zealand not follow suit?¹⁵²

In 1917 the reformers' lobbying partially paid off. Although the Attorney-General continued to oppose the recruitment of women for the Police Force, the Minister of Health, George Russell, proposed that the Health Department employ women to police the public behaviour of girls and young women.¹⁵³ Russell's 1917 Social Hygiene Act, primarily intended to combat the spread of venereal diseases, provided for the introduction of women-staffed 'Health Patrols'.¹⁵⁴ Intense concern over the role of young 'amateur' prostitutes in spreading

¹⁵¹ *White Ribbon* 22:258 (December 1916), p.9.

¹⁵² *White Ribbon* 20:238 (April 1915), p.10; 22:253 (July 1916), p.9; 22:257 (November 1916), pp.9-11; 22:258 (December 1916), pp.5, 9. NZSPWC (Wellington), *Annual Report* 1914, p.6 (MSx 3292 Acc.91-163, ATL).

¹⁵³ *NZPD*, 180, 1917, p.628.

¹⁵⁴ See Chapter V, pp. 225-26.

venereal disease - concern heightened by war-time anxieties - provided the catalyst for action.

The Minister of Health, George Russell, declared that the 'motherly women' appointed under the Act would

have and exercise the powers of police constables so far as it is necessary, and [would] have special charge of the young womanhood of our country for the purpose of guarding, as far as possible, our young women against the dangers that beset them at various points.

However, the women officers were not granted powers of arrest. The most they could do was to patrol public areas and 'speak sharply, or perhaps ... threaten' misbehaving girls.¹⁵⁵ The feminist and purity reformers approved the introduction of women patrols but were not entirely satisfied with the arrangement. They continued to lobby for the introduction of women police.

No comparison was made between the women patrol clause and the detested Contagious Diseases Act which had also allowed officials to approach girls and women suspected of immoral activity. The fundamental - and acceptable - differences were firstly, that women would do the policing, and secondly, that those spoken to were not subject to arrest or medical examination. Supporters of the patrols believed that by offering sympathetic guidance and advice to girls and young women who appeared to be placing themselves at risk, women health officers would help inculcate a higher moral standard in the community.¹⁵⁶

The introduction of the patrols resulted from a convergence of concerns over venereal disease, juvenile depravity and girls' sexual vulnerability. War-time insecurities and the rise of eugenic ideology gave an increased sense of urgency to these problems. Feminist discourse alone had proved insufficient to bring about the introduction of a curfew or women police.

¹⁵⁵ *NZPD*, 180, 1917, p.638.

¹⁵⁶ See Sarah Dalton, 'The Pure in Heart: The New Zealand Women's Christian Temperance Union and Social Purity, 1885-1930' (M.A. Thesis, Victoria University of Wellington, 1993), pp.90-94, for a more detailed discussion of the Health Patrols.

However, rising concern over the impact of venereal disease on the wider community tipped the balance in favour of women patrols. The patrols had a dual purpose. They were to protect the wider community from the horrors of venereal disease but they were also dedicated to protecting young girls from sexual danger. Long-standing concerns over the damage done by venereal disease and over girls' sexual vulnerability merged. The result was increased state regulation of girls' public behaviour.

VI

As well as supporting new attempts to monitor girls' behaviour, the feminist and social purity organisations continued to demand the introduction of legislation which would target men. In 1913 a deputation representing a range of feminist and social purity organisations urged the Prime Minister, William Massey, to raise the age of consent to at least eighteen years of age.¹⁵⁷ However, officials in the Department of Justice reported that there was no pressing need for a higher age of consent for girls and that an increase could lead to the blackmail of men by unscrupulous girls.¹⁵⁸ Massey subsequently declined to act upon the reformers' recommendations. The reformers continued to battle for their proposed reforms undeterred. In 1921 the Women's Christian Temperance Union presented a petition to the Government demanding that the age of consent for girls be raised to eighteen. Signed by 10,130 citizens including 100 ministers of religion, 50 medical practitioners, 100 lawyers and other

¹⁵⁷ The organisations included the Society for the Protection of Women and Children, the Women's Christian Temperance Union, the Young Women's Christian Association, the Society for the Health of Women and Children, the Girls Scout Movement, the Kindergarten Council and the Tailoresses Union (Dunedin): Crimes Act - Crimes Bill - Representations for Amendment 1905-22, J1 18/10/6 (NA).

¹⁵⁸ The Department also declared that it was unaware of any necessity for legislation to protect boys from older women: *ibid.*

professionals and by more than 200 'leading businessmen', the petition nevertheless failed to move the Government to raise the age beyond sixteen years.¹⁵⁹

That girls reached puberty well before the age of eighteen or twenty-one did not concern the reformers. Unlike their opponents, they did not equate physical maturity with mental or moral maturity.¹⁶⁰ They believed that sex had too many important consequences for girls and women for it to be indulged in before they had developed sufficient maturity to cope successfully with men's advances, marriage and maternity. Prominent Christchurch feminist Eveline Cunningham declared in 1897 that 'Sixteen, seventeen, and eighteen are the most dangerous years in a girl's life. Often I observe that after twenty girls' natures undergo a wonderful change: the brain asserts control over the purely sexual instincts'.¹⁶¹ Twenty years later, in 1918, the Women's Christian Temperance Union used statistics on illegitimacy to argue that the girls most at risk of seduction were those aged between sixteen and twenty-one.

¹⁵⁹ *Ibid.*

¹⁶⁰ For a discussion of the lack of significance assigned to puberty by feminists on this issue see Gorham, 'Maiden Tribute', pp.369-70, and Walkowitz, *Prostitution*, p.249.

¹⁶¹ Evidence - 1897 Young Persons' Protection Bill Committee, p.5.

Table 8. Illegitimate births 1910-1915¹⁶²

Age of mother	Total births
13	4
14	20
15	57
16	131
17	260
18	379
19	430
20	407
21	383

In 1923, the President of the National Council of Women similarly argued that the age of consent ought to be twenty-one. However, she noted that reformers were more likely to get results if they reduced their demands and promoted eighteen as the age of consent.¹⁶³ The Women's Christian Temperance Union and the National Council of Women continued to demand that the age be raised from sixteen to at least eighteen until the late 1920s.

Feminists ignored the coercive implications that their campaign had for the girls themselves. Raising the age of consent denied girls the right to make decisions about their own sexuality. This denial is particularly striking when viewed in the context of feminist attempts to raise the age of consent as high as twenty-one.¹⁶⁴ In her work on prostitution in Britain, Judith Walkowitz has argued that feminists' 'desire to protect young girls thinly masked coercive

¹⁶² WCTU Minutes, Annual Convention, Timaru, 18 March 1918 (MS Papers 79-057-09/11, ATL).

¹⁶³ NCW Minutes, National Conference, Auckland, 1923, p.31 (MS Papers 1371-126, ATL).

¹⁶⁴ Gorham, 'Maiden Tribute', p.365.

impulses to control their voluntary sexual responses'.¹⁶⁵ Feminists in New Zealand similarly sought to control girls' voluntary participation in sexual activity. Although they laid the bulk of the blame for juvenile prostitution and immorality on licentious males, advocates of a higher age of consent and the introduction of women police were as interested in controlling girls and young women as they were in controlling the men.

Throughout the period 1880 to 1925 reformers and politicians primarily focused upon the sexual activities of girls and their adult male seducers. Boys' involvement in sexual activity drew far less attention. However, boys' sexual vulnerability did cause some concern. As mentioned earlier, legislators introduced safeguards into the 1896 Criminal Code Act to protect boys the same age or younger than their sexual partners from sexual assault charges. Seddon's 1896 Juvenile Depravity Suppression Bill also addressed boys' sexual activities. Section 5 proposed that boys aged under seventeen be apprehended if found in brothels. That same year the Women's Christian Temperance Union suggested that members ask political candidates whether they were prepared to raise the age of consent for males as well as females. However, the Union did not persist with the issue. During the 1910s the question of an age of consent for boys emerged more strongly. In 1911 the Union lobbied Parliament to introduce a male age of consent.¹⁶⁶ Two years later the Society for the Protection of Women and Children declared that boys aged under eighteen ought to be protected by an age of consent from solicitation by older women. Representatives from a meeting of Nelson women's organisations supported their call,

¹⁶⁵ Walkowitz, *Prostitution*, p.249. See also Gorham, 'Maiden Tribute', pp.364-366.

¹⁶⁶ WCTU Minutes, National Convention, New Plymouth, 1911 (MS Papers 79-057-09/10, ATL).

urging that 'it be made an offence for any female above the age of consent to have sexual intercourse with a boy under the age of eighteen years.'¹⁶⁷

The reform organisations, previously fixated upon male sexual aggression and girls' sexual vulnerability, began to admit that males could also be victims and that females could be sexual aggressors.¹⁶⁸ However, the new interest in boys as sexual victims and in females as sexual offenders demonstrated by the social purity and feminist movements should not be interpreted as a weakening of their attack on male immorality. Their attack on male sexuality never faltered during the first decades of the twentieth century. Reformers continued to demand heavy penalties for men who seduced or sexually assaulted girls and young women.

Feminist and social purity reformers significantly broadened their focus during the 1910s and 1920s. During the late 1800s and early 1900s they had emphasised girls' sexual vulnerability. While they continued to uphold this theme well into the 1920s they began to pay greater attention to girls as sexual transgressors. The rise of eugenic ideology significantly influenced reformers' ideas about sexual immorality. They increasingly associated immorality with mental weakness. Representatives of the women's and purity organisations began to articulate concerns about 'feeble-minded' and depraved girls whose promiscuous activities not only breached the dominant moral code but threatened the health and well-being of the wider community. Chapter VII will explore this development in detail.

¹⁶⁷ Crimes Act - Crimes Bill - Representations for Amendment 1905-22, 18 August 1913, J 1 18/10/6 (NA).

¹⁶⁸ *Ibid.* Representatives of the SPWC also argued in 1913 in favour of the detention of the mothers of two or more illegitimate children. 'These women', they argued, 'showed that there was some flaw which they could not correct'. For their own and society's benefit they ought to be compulsorily detained by the state.

VII

The campaigns to raise the age of consent, introduce a curfew for youth and introduce women police were fundamentally shaped by changing attitudes to children and youth. Feminist and social purity discourse also played major roles in shaping legislative initiatives in this period. However, as demonstrated by the failure of the post-1896 campaign to raise the age of consent, these discourses were insufficient on their own to persuade politicians to raise the age above sixteen. The discourses of childhood utilised in the earlier campaign had largely run its course by the late 1890s.

New expectations of families and a new willingness for the state to intervene when parents failed in their duties to control their children also helped inspired the campaigns to protect and control the nation's youth. Social disorder, particularly that involving children, was less acceptable in the post-frontier society of the late nineteenth and early twentieth centuries. Although reformers emphasised the need to protect the young from the dangers of public life, they also wished to control families who allowed their children to run wild on public streets. The rise of the feminist movement and contemporary concerns about prostitution encouraged a particular focus upon the activities and sexual vulnerability of girls. Boys' sexual lives received scant attention. Concern over 'depraved' male larrikins primarily focused upon gambling, smoking and anti-social behaviour rather than upon their sexual activities.

Between the 1880s and the 1920s feminist and social purity reformers endeavoured to reshape perceptions about male and female sexuality. They emphasised girls' fundamental sexual passivity and argued that men could be taught through the age of consent legislation to control their sexual appetites. However, while they continually emphasised the need to protect girls, their actions reveal a strong desire to also control their activities. While the reformers

continued to lay most of the blame for immorality upon the men who seduced girls, they increasingly acknowledged that girls' own behaviour left much to be desired. Feminist and social purity reformers wished to inculcate a higher standard of morality in both adult men and young girls through the age of consent, curfew and women-police campaigns.

CHAPTER VII

BEYOND THE PALE

'DEGENERATES', 'PERVERTS' AND THE STATE

The 'greatest menace to personal liberty and free social intercourse', declared the National Council of Women in 1921, 'is the unrestrained presence of moral perverts and sexually uncontrolled persons in the community'.¹ Women and children's liberty and safety, and men's health, were being compromised by the numbers of male and female sexual degenerates allowed to roam the streets at will. The Council issued its statement at a time of growing concern that New Zealand's status as an 'ideal society' was being undermined by rising rates of sexual offending and by the unrestricted multiplication of the mentally and morally 'unfit'. Three years later, inspired by the same eugenically based fears over the reproduction of the 'unfit' and the impact of sexual offending upon the community, the New Zealand Government appointed a Committee of Inquiry to investigate mental defectiveness and sexual offending in New Zealand. The Committee's report identified a spectrum of sexual 'degenerates' who required some form of state imposed control or treatment. These individuals fell into two broad categories: the male 'sexual pervert' (including the exhibitionist, the rapist, the child molester and the homosexual) and the 'oversexed feeble-minded girl'.²

During the 1880s and 1890s legislative concern over sexual offending and sexual degeneracy had generally remained confined to discussions of prostitution, the age of consent

¹ NCW Minutes, Annual Conference, Wellington, 1921, pp.7, 9. The Council was echoing a statement made by the International Council of Women in 1920: International Council of Women, Correspondence, Folder 3, MS Papers 3969 (ATL).

² Committee Report, 1924 Committee of Enquiry into Mental Defectives and Sex Offenders, H 1 28044 54/79/1 (NA), p.25.

for girls and incest. After 1900 feminist and social purity concerns meshed with new medical and eugenicist theories to produce a broader and more intense examination of sexual 'degenerates' focusing upon paedophilia, male homosexual activity and the mentally defective. The Government established the 1924 Inquiry in response to fears raised by social purity organisations and penal authorities over the impact of the defective and sexually degenerate on the nation. This chapter seeks to outline the development of discourse concerning sexual crime, degeneracy and perversion from the 1880s until 1925 when the Committee of Inquiry into Mental Defectives and Sexual Offenders presented its report to the Government. In particular, it seeks to explain the impact of religious, feminist, social purity and medical ideologies on the development of official discourse and policy concerning sexual 'degenerates' and 'perverts'.

I

Late nineteenth-century New Zealand legislation incorporated a wide range of provisions distinguishing illicit from licit sexual activities. Together with more informal social control mechanisms, laws concerning marriage, prostitution, juvenile sexuality and sexual assaults helped define acceptable and unacceptable sexual behaviour. Men and women who breached the moral codes encapsulated in the legislation faced varying levels of condemnation or punishment depending upon the nature of the offence. Some transgressions could more easily be forgiven, overlooked or explained away than others. Attitudes to some sexual behaviours also changed over time. However, some behaviours were abhorred throughout the period 1880 to 1925. These included indecent assaults on small children, rape and indecent assaults on women and girls, sodomy, male homosexual activity - consensual and non-consensual - and bestiality.

Legislators considered buggery (a term covering sodomy and bestiality) the most heinous of all the sexual crimes, regardless of whether (in the case of sodomy) both parties consented or one individual forced himself upon another. Until 1893 the New Zealand state prosecuted individuals accused of buggery or sexual assault under Offences Against the Person statutes enacted in 1867 and amended in 1868 and 1874. The 1867 Act made a clear distinction between the sexual assault of females and 'unnatural offences'. The latter category covered both 'the abominable crime of buggery committed with mankind or with any animal' and indecent assault of any male person. The charges of carnal knowledge of a girl under ten, rape and buggery all provided for maximum sentences of life imprisonment. However, the minimum sentences differed quite considerably. While men convicted of sexual assaults on women and young girls faced a minimum sentence of two to three years imprisonment, offenders convicted of buggery faced a minimum ten year sentence.³

The state's particularly harsh condemnation of 'unnatural offences', and buggery in particular, rested upon long-standing Christian injunctions against any form of non-procreative sexual activity. The Church taught that 'natural' and proper sexual activity served a procreative purpose. It considered sexual activity which thwarted procreation both unnatural and sinful.⁴ The religious authorities based their condemnation of sodomy on the biblical story of Sodom and Gomorrah (Genesis chapters 18-19) and upon injunctions against 'unnatural acts' in

³ Offences Against the Person Act, *New Zealand Statutes*, 1867, s. 45, 47 and 58. The 1868 and 1874 Amendment Acts added flogging for offenders convicted of sex assaults on girls and women. See Tony Severinsen, '"Easy to Charge, Hard to Disprove": Responses to Sexual Assault on Women in New Zealand, 1860-1910' (M.A. Thesis, Victoria University of Wellington, 1995), pp.148-152, regarding these amendments.

⁴ David F. Greenberg, *The Construction of Homosexuality* (Chicago & London: University of Chicago Press, 1988), pp.218-219, 275-277.

Leviticus 20:13 and Romans I:26-27.⁵ Stoic writings and Roman legal texts rediscovered during the medieval period reinforced religious-based distinctions between 'natural' and 'unnatural' sexual activity.⁶ Until the early 1530s ecclesiastical courts held jurisdiction over cases of sodomy and bestiality. However, following his break with Rome, Henry VIII brought buggery, among a range of other offences, under the auspices of statute law. The new legislation introduced the death penalty for the full offence.⁷

Despite the heavy penalty imposed for buggery, the specific nature of the crime remained the subject of some confusion from the early 1500s until the late nineteenth century. Henry VIII's Act defined buggery as 'carnall knowledge ... by mankind with mankind, or with brute beast, or by womankind with brute beast'.⁸ However, commentators from the 1500s to the late 1800s frequently used 'sodomy' - a term often used in place of 'buggery' - to refer to any form of sex that did not have a procreative purpose. Heterosexual and homosexual anal sex, oral sex, non-penetrative homosexual acts and even birth control were all referred to at various times as 'sodomitical acts'. A legal ruling of 1781 which required prosecutors in buggery cases to prove both penetration and ejaculation may have helped clarify the legal charge.⁹ Nevertheless many legislators and members of the judiciary continued to use the term sodomy to refer to a wide range of non-procreative sexual activities. As late as 1817 an English court sentenced a man to death under the buggery laws for engaging in oral sex with a boy.¹⁰

⁵ Richard Davenport-Hines, *Sex, Death and Punishment: Attitudes to Sex and Sexuality in Britain Since the Renaissance* (London: Collins, 1990), p.58.

⁶ Greenberg, p.275.

⁷ *Ibid.*, pp.303-304; Davenport-Hines, p.59.

⁸ Greenberg, p.303.

⁹ Jeffrey Weeks, *Coming Out: Homosexual Politics in Britain, from the Nineteenth Century to the Present* (London: Quartet Books, 1977), p.12.

¹⁰ The man was later pardoned: *Ibid.*, pp.13-14. See also Davenport-Hines, pp.60, 94.

Studies of the buggery laws and their enforcement have tended to focus upon the prosecution of male homosexual acts. It is not yet known how many individuals may have been prosecuted under the buggery laws for engaging in heterosexual anal intercourse, oral sex or contraceptive practices. Given that it is the historians of homosexuality who have principally researched this area the focus on male homosexual prosecutions is not particularly surprising. Further research is required to determine the wider significance of the legislation and its application to heterosexual offenders between the 1500s and late 1800s. However, Henry VIII's statute is particularly significant for its role in aiding the state repression of male homosexual activity for over three hundred years. The Act of 1533 remained the principal means of prosecuting and punishing men who engaged in same-sex activities until 1885 in Britain, and 1893 in New Zealand.¹¹

For most of this period prosecutors used Henry VIII's Act to target a series of sexual acts rather than a particular type of person. Historians have argued that during the sixteenth and seventeenth centuries there was no concept of the homosexual in law, and homosexuality was regarded not as a particular attribute of a certain type of person but as a potential in all sinful creatures'.¹² Scholars tracing the history of repression and regulation of homosexual activity have identified the gradual construction of a male homosexual identity between the late seventeenth century and the early 1900s.¹³ Sodomy, formerly seen as an act to which any licentious man might succumb, gradually became identified with a particular type of male - the

¹¹ Weeks, *Coming Out*, p.12.

¹² *Ibid.*, p.12.

¹³ Davenport-Hines, Chapters III and IV; Greenberg, pp.331-341; Martin Duberman, *About Time: Exploring the Gay Past* (New York: Meridian, 1991), pp.445-457; Martin Duberman *et al* (eds.), *Hidden From History: Reclaiming the Gay and Lesbian Past* (London: Penguin Books, 1991), Introduction.

effeminate homosexual. Several highly significant social changes combined to help create a new sense of the sodomite as a distinct type of person. These included a new consciousness of self, the rise of companionate marriage, urbanisation, the development of a distinctive homosexual sub-culture and a new belief in the polarisation of desires.

Personal diaries reveal the emergence of a new sense of self and a new desire to examine personal feelings during the late seventeenth century. This new sense of self contributed to the growth of companionate marriage.¹⁴ Richard Davenport-Hines has argued that the idealisation of marriage contributed to an increased opposition to male homosexual acts. Davenport-Hines writes that 'once marriage was seen not as a way of containing men's lust, but as a way of finding empathy or romance, the deliberate rejection of women of one's own class became a much more "offensive" act'. Openly expressed affection between men became less acceptable and English gentlemen became less physically demonstrative towards one another. Men ceased to kiss their male friends and relatives in greeting or farewell.¹⁵ The new ideal of marriage encouraged husbands to look to their wives for affection, empathy and companionship rather than to male boon companions.

At the same time a distinctive homosexual subculture developed in urban centres. Men seeking homosexual partners met in parks or walks or in 'molly houses' - backrooms in taverns or private houses where men with homosexual interests could meet others of like mind. The growth of cities facilitated the development of the new homosexual subculture. They provided anonymity and privacy - qualities lacking in small towns where locals closely monitored the behaviour of their fellows.¹⁶ Within the molly houses men could dance, flirt and have sex

¹⁴ See Chapter II, pp.39-42, regarding the development of companionate marriage.

¹⁵ Davenport-Hines, pp.66-68, 71-72, 75.

¹⁶ Greenberg, pp.330-331; Davenport-Hines, p.72.

together. Some patrons dressed as women and mimicked female behaviour and mannerisms and outside observers began to regard effeminacy as a fundamental feature of male homosexuality.¹⁷ Davenport-Hines has argued that gender-crossing role-playing where molly house patrons acted out weddings and births led to an increase in official harassment of mollies.

Observers believed that their behaviour mocked the institution of marriage. At a time when marriage was increasingly idealised as a romantic as well as a sexual and economic union, homosexual mimicry and mocking of heterosexual rites and rituals had increased potential to cause offence.¹⁸

The emergence of the distinctive molly-house subculture together with the declining acceptability of displays of affection between males encouraged the development of a stereotype of the sodomite as an effeminate 'other'. The myth of polarised desires emerged. Commentators began to associate homosexual sodomy with a particular type of man. Whereas previously the act had been seen as just one of a number of vices indulged in by licentious men who dallied with females as well as males, sodomy was increasingly associated with effeminate men who confined their attentions to other males.¹⁹

During the late 1700s the rise of the middle classes and the subsequent bourgeoisification of the aristocracy led to a general tightening up of sexual morality. Prosecutions for sodomy increased. Previously most homosexual prosecutions had involved cases of rape. A more active hunting out of sodomites resulted in an increase in prosecutions for consensual acts.²⁰ The old story of Sodom and Gomorrah had endowed buggery with an

¹⁷ Weeks, *Coming Out*, p.37; Greenberg, p.335; Davenport-Hines, pp.73-75.

¹⁸ Davenport-Hines, p.73.

¹⁹ Weeks, *Coming Out*, p.37; Greenberg, p.337; Davenport-Hines, p.77. See Chapter VI, p.245, regarding Stead's prominent role in the campaign for a higher age of consent for girls.

²⁰ Weeks, *Coming Out*, p.12; Greenberg, p.342.

enduring association with divine punishment, disaster and death. It is significant that the numbers of buggery trials during the eighteenth and nineteenth centuries peaked at times of war and social turmoil.²¹ Sodomites provided an insecure and unsettled public with convenient scapegoats during times of stress.

Although the British state abolished the death penalty for over a hundred crimes during the 1820s it retained the sentence for convicted sodomites. The legislators also tightened the law by removing the need to prove emission of seed. However, despite the determination of the legislators to retain the death penalty for buggery the courts recognised a growing public reluctance to send offenders to the gallows. After 1836 judges ceased to hand down death sentences in these cases. In 1861 the English Parliament finally formally recognised the changed judicial policy and replaced the death penalty for sodomy with life imprisonment.²²

Until the late 1860s New Zealand used English legislation to prosecute cases of sodomy and indecent assault upon males. In 1867 the colony enacted its own legislation - a simple copy of the English Act of 1861.²³ The new Act criminalised buggery, attempted buggery and 'any indecent assault upon a male person'. The state convicted a total of seventeen men charged with committing 'unnatural offences' between 1872 and 1880. Most of the cases involved male rape. Consensual male homosexual activities generally escaped the law provided the men involved acted discreetly. However, the secrecy and shame surrounding male homosexual acts encouraged a climate of fear within which blackmailers could flourish.²⁴ Men who successfully

²¹ Weeks, *Coming Out*, p.13; Davenport-Hines, pp.100-102.

²² Weeks, *Coming Out*, pp.13-14.

²³ Offences Against the Person Act, *NZ Statutes*, 1867.

²⁴ Stevan Eldred-Grigg, *Pleasures of the Flesh: Sex and Drugs in Colonial New Zealand 1840-1915* (Wellington: A.H. & A.W. Reed, 1984), pp.49-51.

propositioned other males risked not only a prison sentence but future harassment by opportunists willing to exploit former partners' sexual secrets for financial gain.

From the mid-nineteenth century same-sex sexual activity and other sexual 'perversions' increasingly attracted the professional interest of lawyers, doctors and psychologists in Europe. The medical profession embarked upon an intense process of classification and labelling of sexual 'deviants'. Much of the impetus for the breaking down of the broad category of 'unnatural offences' into more detailed sub-categories came from the introduction of new criminal codes. Medico-legal experts in France and Germany wished to know 'whether the disgusting breed of perverts could be physically identified for courts, and whether they should be held legally responsible for their acts'.²⁵ Researchers and theorists used a range of terms to describe individuals sexually attracted to members of their own sex. Karl Heinrich Ulrichs coined the term 'Uranian' to refer to members of the 'third sex' - men who favoured sexual relations with other men. Others preferred the terms 'invert' or 'pervert'. In 1869 Karoly Maria Benkert coined the modern term 'homosexual' to describe individuals whose sexual attraction to members of their own sex appeared to be innate and ineradicable.²⁶

Ulrichs and Benkert argued that sexual preferences were congenital. During gestation in the womb the fetus failed to develop a preference for partners of the opposite sex. Uranians, or homosexuals, were thus born, not made. Ulrichs, attracted to men himself, used this argument to promote greater tolerance of homosexuality.²⁷ Other theorists developed the ideas of Ulrichs and Benkert but added new components. Advocates of degeneracy theory maintained that

²⁵ Arno Karlen, *Sexuality and Homosexuality* (London: 1971), p.185, quoted in Weeks, *Coming Out*, pp.25-26.

²⁶ Greenberg, pp.408-09; Weeks, *Coming Out*, pp.25-26.

²⁷ Greenberg, p.408-409.

environmental factors played an important role in the production of 'perverts'. They argued that over time poor environments damaged the health of individuals. These weakened men and women passed on diseases and disabilities to their progeny. In cases where family members remained in unhealthy surroundings the departure from normalcy grew with each new generation. Environment and heredity conspired to produce degenerates, among whose ranks the sexual perverts could be found.²⁸

During the late nineteenth century English writers Havelock Ellis and Edward Carpenter entered the debate over homosexuality. Following on from Ulrichs and Benkert, Ellis and Carpenter argued that congenital homosexuals could not be blamed for their inclinations but should be treated with toleration and understanding. Ellis and Carpenter rejected degeneracy theory and its labelling of homosexual inclinations as inherently pathological. They argued that many talented and intellectual individuals were sexually attracted to members of their own sex.²⁹ However, Ellis also acknowledged that some cases of sexual inversion could be acquired.

Boys corrupted by older men could develop into inverts. Many other commentators emphasised this latter view. The editors of the leading English medical journal *The Lancet* remained unconvinced that 'homosexuality [was] anything else than an acquired and depraved manifestation of the sexual passion'.³⁰ Rejecting the new theories of congenital inversion or inherited degeneracy, many commentators continued to argue that perversions were learned behaviours. Sexual perverts ought thus to be severely punished in order to deter them from indulging their warped tastes and corrupting others.

²⁸ *Ibid.*, pp.411-415.

²⁹ *Ibid.*, p.411. Ellis' wife, Edith Lees, was lesbian. Carpenter was himself homosexual. See Weeks, *Coming Out*, Chapters V and VI regarding Ellis and Carpenter.

³⁰ Quoted in Greenberg, p.416.

Late nineteenth-century legislators in England and New Zealand endorsed the view that homosexual activities were acquired vices and that offenders ought to be severely punished for indulging in 'unnatural' activities. In 1885, the English parliament significantly tightened the laws relating to homosexual offences. The 1885 Criminal Law Amendment Act had originally been introduced into Parliament as a Bill to raise the age of consent for girls and tighten brothel-keeping laws.³¹ However, Henry Labouchère, a Radical politician with a reputation for mischief-making, moved an amendment to the original Bill to include a clause referring to 'gross indecency' between males.³² Labouchère's Amendment, as it became known, provided for the punishment of

any male person who, in public or private, commits, or is a party to the commission of, or procures or attempts to procure the commission by any male person of any act of gross indecency with another male person.³³

Convicted offenders would face up to two years imprisonment with hard labour.³⁴ Labouchère's Amendment proved highly significant for the regulation and repression of male homosexual activity from the late 1880s until the latter decades of the twentieth century. The Amendment extended the law to cover all male homosexual offences, including consensual acts committed in private. In order to successfully prosecute non-sodomitical homosexual activity under the 1861 Offences Against the Person Act, it had been necessary to demonstrate that an assault had taken place. By eliminating the need to prove assault, the new legislation significantly

³¹ See Chapter VI, pp.245-46.

³² Davenport-Hines, pp.131-32.

³³ *Ibid*, p.131.

³⁴ *Ibid*.

expanded the grounds upon which homosexually-inclined males could be successfully prosecuted.³⁵

Labouchère argued that his actions had been inspired by a report on male prostitution sent to him by prominent purity campaigner and scandal monger W.T. Stead.³⁶ However, several historians have argued that Labouchère's amendment was a facetious act intended to disrupt the smooth passage of a Bill he considered badly drawn up and full of faulty amendments. The amendment was thus an act of personally motivated legislative obstruction rather than an expression of a new fear or abhorrence of homosexuality.³⁷ Whatever Labouchère's motivation, his colleagues approved his initiative and included the amendment in the new Act.

New Zealand legislators proved less concerned about male sexual 'perverts' than their English counterparts. Although the English Act of 1885 Act inspired much debate in New Zealand regarding the age of consent, it provoked scarcely any comment on the new provisions concerning male homosexual acts. During the late 1880s and early 1890s colonial legislators proved far more concerned with the sexual vulnerability of young girls than with the private activities of homosexual men. In 1888 a Bill dealing with the age of consent included a copy of the English clause concerning acts of indecency between males. However, the clause failed to gain the support of the New Zealand legislators. Only one politician spoke on the clause and he opposed its inclusion in the Bill. Vincent Pyke, the member of the House of Representatives for Dunstan, declared himself astounded by the inclusion of such a clause in a New Zealand Bill.

³⁵ Jeffrey Weeks, *Sex, Politics and Society: The Regulation of Sexuality since 1800* (London/New York: Longman, 1994), p.102; Davenport-Hines, p.132.

³⁶ Weeks, *Sex, Politics and Society*, p.102; Weeks, *Coming Out*, pp.14-15, 20.

³⁷ F.B. Smith, 'Labouchere's Amendment to the Criminal Law Amendment Bill', *Historical Studies*, 17:67 (October 1976), pp.165-173; Greenberg, p.400; Davenport-Hines, p.131.

Did anyone suppose for a moment that males were liable to indecent assault? He had never heard of such a thing in his life. He had heard of the iniquities of Sodom and Gomorrah, but had never heard or thought that society was so bad in New Zealand as to require a Bill of this kind'.³⁸

Pyke's fellow legislators appear to have shared his disbelief that such offences were prevalent in New Zealand. None supported the retention of the clause and it was subsequently dropped from the proposed legislation.

However, in 1893, without adopting the wording of Labouchère's amendment, the new New Zealand Criminal Code Act introduced a similar clause into the colony's criminal law. The crime remained 'indecent assault' committed by a male on a male, but did not refer to 'gross indecency'. Nevertheless, the Code included a new and crucial provision: 'It shall be no defence to an indictment for an indecent assault on a male of any age that he consented to the act of indecency'.³⁹ The Act thus explicitly brought consensual non-sodomitical male homosexual acts within the jurisdiction of New Zealand law. The Criminal Code also introduced the additional penalty of flogging for men convicted of unnatural offences.⁴⁰ Despite the significant changes in the laws regarding unnatural offences heralded by these new clauses the two parliamentary chambers accepted them without comment.

The extension of anti-homosexual law and the introduction of flogging as a punishment indicate a general lack of sympathy with, or lack of awareness of, the arguments of theorists who urged that congenital invert be treated with understanding. In England and New Zealand such arguments and theories failed to penetrate the general consciousness of the general public and politicians during the 1880s and 1890s. The arguments of the sexologists received limited

³⁸ *NZPD*, 62, 1888, pp.329-330.

³⁹ Criminal Code Act, *NZ Statutes*, 1893, s. 137 (3)

⁴⁰ *Ibid.*, s. 136 and 137.

circulation, even among medical professionals.⁴¹ A survey of the *New Zealand Medical Journal* between 1887 and 1914 reveals the complete absence of any discussion of sexual perversion in the journal during these years.⁴² Members of the public had even more limited access to the new theories. Censorship laws acted as a major barrier to the circulation of texts concerning homosexuality and other 'deviant' behaviours. In 1898 the English police prosecuted a bookseller who stocked Ellis' *Sexual Inversion* on the grounds that it was a 'lewd, wicked, bawdy, scandalous and obscene libel'.⁴³ As late as 1925 the New Zealand authorities restricted the sale of Richard Krafft-Ebing's influential text *Psychopathia Sexualis*, first published in 1886, to medical and other professional men.⁴⁴ Whether due to ignorance of, or indifference towards, the arguments of men such as Ellis, Carpenter and Krafft-Ebing, New Zealand official attitudes to individuals convicted of unnatural offences remained punitive well into the twentieth century.

During the 1880s, 1890s and early 1900s feminist and social purity campaigns to raise the age of consent and repeal the Contagious Diseases Act kept debate over sexual offending focused firmly upon heterosexual rather than homosexual offences. Purity reformers did not

⁴¹ Weeks, *Sex, Politics and Society*, p.105. Weeks argues that 'the old morality rather than the new psychology retained its influence until at least the interwar years' with most doctors 'indifferent to or ignorant of the phenomena.' See also Davenport-Hines, p.116.

⁴² See Garry Wotherspoon, *City of the Plain: History of a Gay Sub-Culture* (Sydney: Hale & Ironmonger, 1991), p.26, regarding the similar slow acceptance in Australia of the new medical theories. See also Michael Gilding, *The Making and Breaking of the Australian Family* (Sydney: Allen & Unwin, 1991), p.103; and F.B. Smith, *The People's Health 1830-1910* (London: Croom Helm, 1979), p.299.

⁴³ Quoted in Ronald Pearsall, *The Worm in the Bud: The World of Victorian Sexuality*, first published 1969 (London: Pimlico, 1993), p.239.

⁴⁴ Letter from the Office of the Comptroller of Customs (25 September 1925) C1 24/43/(NA). Krafft-Ebing differed from Ellis and Carpenter in that he argued that homosexuality was the result of hereditary degeneration. However, he too called for greater tolerance of homosexuals. Greenberg, pp.414-15.

consider homosexual activity a serious problem for the young colony. Many commentators associated such activity with the old country and with effete aristocrats rather than with hearty colonials. Lady Stout, prominent feminist and wife of former New Zealand Premier Robert Stout, spoke along these lines when interviewed by the *Times* during a tour of Britain in 1910. 'We have no class of men', she declared, 'who are effeminate in dress or intellect or degenerate in morals, as in old countries'.⁴⁵ Unlike in England where homosexual scandals such as the Cleveland Street affair and the Oscar Wilde trial kept the spectre of homosexual 'degeneracy' and 'perversion' before the public eye, 'unnatural offences' in New Zealand attracted little public and virtually no political attention.⁴⁶ A survey of police statistics reveals very few prosecutions for sodomy, bestiality or indecent assaults upon males between 1880 and 1910. Even fewer cases resulted in conviction.⁴⁷ Reported cases of sexual assaults on women and girls far outweighed cases of homosexual sodomy or indecent assault of a male. New Zealand also lacked the large urban populations of the old world where obvious homosexual subcultures might develop.⁴⁸ The relative invisibility of homosexuality in the colony and the low numbers of reported cases of unnatural offences resulted in homosexuals largely being ignored by social purity reformers and politicians during the late 1800s and early 1900s.

⁴⁵ Quoted in Eldred-Grigg, p.169.

⁴⁶ The Cleveland Street affair of 1889-90 concerned a homosexual circle involving young telegraph boys and gentlemen who paid the boys for their sexual services. See Pearsall, pp.467-473. On Oscar Wilde's trials, see Trevor Fisher, *Scandal: The Sexual Politics of Late Victorian Britain* (Far Thrupp Stroud: Alan Sutton Publishing, 1995), pp.135-157. The *New Zealand Parliamentary Debates* reveal only two allusions to 'unnatural activities' between 1889 and 1914. These concerned the accommodation for prisoners employed in tree-planting camps and the possibility of men sharing huts 'contracting habits that would degrade them below the level of brute beasts': *NZPD*, 137, 1906, p.165; *NZPD*, 150, 1910, p.355.

⁴⁷ Police Reports, *AJHR*, 1880-1925.

⁴⁸ See Wotherspoon, pp.13-32, regarding the conditions required for the development of a thriving homosexual subculture.

II

During the 1890s feminist and social purity reformers' attention focused on heterosexual rather than homosexual relations with a particular emphasis upon the sexual exploitation of young girls. The reformers said little about the rape and sexual assault of adult women. Although during the early 1900s women's organisations increasingly acknowledged that adult women also suffered from sexual assault they continued to place the greatest emphasis upon girls' sexual vulnerability. The assault of adult women was more problematic for the reformers.

Children and young girls - idealised as sexual innocents - could more easily be presented as blameless victims. Adult women who charged men with sexual violation found it less easy to represent themselves as completely blameless. Their own behaviour, and their sexual history in particular, was likely to be closely scrutinised for any hint of 'loose' conduct. Reformers' relative silence on sexual assaults of adult women stemmed from a desire to put their energies into protecting those victims who appeared most vulnerable and whose sexual purity and innocence could most easily be defended.⁴⁹

The numbers of reported sexual assaults against women and girls had steadily decreased during the 1880s. However, after 1890 the numbers increased dramatically. In 1890 ten cases of indecent assaults on women and girls were reported to the police. Fifty-four such assaults were reported in 1900. Reports of rape, attempted rape and carnal knowledge of girls also rose in this period. In contrast, reported cases of 'unnatural offences' remained relatively low.⁵⁰ However, the rise in reported sexual assaults on females can largely be attributed to escalating concern at children's sexual vulnerability rather than to a sudden rise in actual offences. The

⁴⁹ See Severinsen, pp.161-62.

⁵⁰ Police Reports, *AJHR*, 1880-1925.

raising of the age of consent and the active seeking out of victims by organisations such as the Society for the Protection of Women and Children encouraged increased reporting of cases of sexual assault.⁵¹

The rise in reported sexual assaults inspired a campaign for harsher punishment of men who molested or assaulted children and women. In March 1901 the Women's Christian Temperance Union passed a resolution urging stricter legislation to deal with the problem of assaults on children.⁵² Later that year Thomas Mackenzie raised the issue in the House, demanding that the 'brutes and scoundrels' who assaulted women or children be 'lashed within an inch of their life'. Although the law allowed the flogging of sex offenders Mackenzie said that some Judges 'did not apply the lash at all, and some very sparingly'. However, Premier Richard Seddon refused to amend the Criminal Code Act so that Judges would have to order more floggings, arguing that it already imposed adequate penalties.⁵³

Seddon's answer failed to satisfy the Women's Christian Temperance Union, which urged heavier penalties for sexual assaults. In 1904 the Union began to monitor convictions and sentencing in cases of assaults against women and young girls.⁵⁴ Two years later it passed a resolution urging that special homes be established for 'men and women who are irresponsible through deficiency of sexual control'.⁵⁵ In 1912 it issued a statement suggesting that sex offenders be castrated:

⁵¹ For a more detailed examination of the rise in reported sexual assaults see Severinsen, pp.146, 155-162.

⁵² WCTU Minutes, Annual Convention, Wellington, 25 March 1901 (MS Papers 79-057-09/09, ATL).

⁵³ *NZPD*, 117, 1901, p.488.

⁵⁴ WCTU Minutes, Annual Convention, Blenheim, 7 March 1904 (MS Papers 79-057-09/09, ATL).

⁵⁵ WCTU Minutes, Annual Convention, Greymouth, 23 March 1906 (MS Papers 79-057-09/10, ATL).

We strongly urge that all youths & men, who have proved themselves incapable of moral self-control should in the interests of the community and for the better protection of our girls and women be either entirely segregated or given the choice of submitting themselves to an operation which would prevent them from inflicting any further sexual wrong.⁵⁶

The Union also continued to support the use of corporal punishment as a deterrent to sexual offending. In 1913 it commended Justice Edwards for ordering the flogging of men convicted of indecent assaults on young children and urged mandatory flogging of men found guilty of criminal assaults on women and children.⁵⁷

III

The Union's suggested solutions - segregation, surgery and flogging - partly reflected traditional punitive attitudes to sexual offenders. However, they also incorporated aspects of new criminological and medical theories concerning the treatment of sexual degenerates and perverts. The late nineteenth-century passion for the classification of sexual degenerates and other criminals encouraged new approaches to the treatment of convicted criminals. Advocates of the 'new penology' emphasised the need to distinguish between different types of offenders. Under classical penology, all inmates received the same treatment. Reformers argued that more could be achieved if the penal system allowed for differentiation of treatment depending upon the particular natures, needs and behaviours of different prisoners.⁵⁸ The penal reformers embraced a medical model of criminality which drew upon the ideas of early criminologist Cesare Lombroso. Lombroso shifted the emphasis of criminological studies from the crime to

⁵⁶ WCTU Minutes, Annual Convention, Dunedin, 21 March 1912 (MS Papers 79-057-09/10, ATL).

⁵⁷ WCTU Minutes, Annual Convention, Nelson, 10 March 1913 (MS Papers 79-057-09/11, ATL).

⁵⁸ John Pratt, *Punishment in a Perfect Society: The New Zealand Penal System 1840-1939* (Wellington: Victoria University Press, 1992), pp.168-69.

the criminal. He identified a range of criminal types including the born criminal, the criminal by passion, the insane criminal and the occasional criminal.⁵⁹ Advocates of the new penology promoted the scientific study of criminals in order to discover why each individual had fallen from grace. They argued that gaining a better understanding of the natures and characters of individual criminals would enable prison authorities to reform and rehabilitate offenders more effectively.⁶⁰ The women's organisations endorsed the scientific approach upheld by supporters of the new penology and co-opted some of the new theories.⁶¹ Although the Women's Christian Temperance Union continued to support flogging of men who assaulted women and children it also suggested that sex offenders might benefit from specialised treatment either in the form of surgery or through segregation in specialised institutions.⁶²

Politicians also increasingly accepted the validity of the new criminological, medical and penological theories.⁶³ In 1906 Parliament passed the Habitual Criminals Act. The Act introduced new provisions for the detention of convicted sex offenders. In cases where offenders had already been convicted of similar offences on at least two previous occasions they could be declared 'habitual criminals'. Their release from prison would depend upon the recommendation of either the prison Governor, the Supreme Court or a Judge that the offender

⁵⁹ R. Martin, R. Mutchnick and W.T. Austin, *Criminological thought: Pioneers Past and Present* (New York: Macmillan, 1990), pp.21, 29-32. See also Larry Siegal, *Criminology: Theories, Patterns and Typologies* (St Paul: West Publishing Company, 1992), pp.35-37.

⁶⁰ Pratt, pp.171-74.

⁶¹ The National Council of Women passed a resolution supporting the scientific classification of offenders and the individualisation of treatment at their 1896 annual convention: NCW Minutes, Annual Convention, 1896, p.8 (MS Papers 1371-106, ATL).

⁶² WCTU Minutes, Annual Conventions 1906-1919 (MS Papers 79-057-09/10, 09/11 & 09/14, ATL).

⁶³ Early support came from several members of the Liberal Party including T.K.Sidey, E.G. Baume, G. Laurenson, T.M. Wilford and A. Hogg. See Pratt, pp.187-190.

had sufficiently reformed and could be safely released into the community.⁶⁴ However, the Government took a more cautious approach towards suggestions that surgery be used as a means of 'curing', or at least incapacitating, sexual offenders. During the House of Representatives' second reading of the Habitual Criminals Bill, Liberal politicians Thomas Mackenzie, John Thomson and Josiah Hanan each expressed their support for a surgical solution to sexual offending.⁶⁵ However, their enthusiasm for the castration or sterilisation of offenders failed to persuade their colleagues to amend the Bill. The indeterminate sentence and flogging remained the preferred options.

Dr J.G. Findlay, Minister of Justice between 1909 and 1911, encouraged further development and application of the new penology within New Zealand's prisons. In 1910 Findlay proposed a fundamental re-organisation of the penal system. He suggested that prisoners be classified into eleven different criminal types.⁶⁶ Offenders would be sent to different institutions depending upon the nature of their crimes. According to Findlay, 'sexual perverts' (men convicted of unnatural offences) would benefit most from detention and treatment within a criminal asylum.⁶⁷ Although a lack of resources prevented the full implementation of Findlay's ambitious scheme, the authorities set New Plymouth Prison aside

⁶⁴ *Ibid.*, p.163.

⁶⁵ *NZPD*, 1906, 137, pp.166-67, 171.

⁶⁶ Findlay proposed that male offenders be divided into the following categories: professional criminals, sexual perverts, criminals of unsound mind, drunkards, incipient and pseudo criminals, corrigible criminals and 'the rest of the criminal class'. He suggested that females be classified as incorrigible, corrigible, incipient and pseudo criminals or as criminals of unsound minds: *A Scheme for the Reorganization of the Prison System of New Zealand*, prepared by the Minister of Justice, *AJHR*, 1910, H-20B, p.2.

⁶⁷ *Ibid.*, p.2. See also Findlay's second reading speech on the 1910 Crimes Amendment Act: *NZPD*, 1910, 150, pp.350-351.

in 1917 for men convicted of buggery or indecent assault upon other males.⁶⁸ However, men convicted of assaults against females continued to be scattered amongst the general prison population.

IV

Reformers and politicians were also concerned about female sexual degenerates. The resolution passed by the Women's Christian Temperance Union in 1904 concerning men who lacked sexual self control also made specific mention of women similarly 'irresponsible through deficiency of sexual control'.⁶⁹ The women who concerned the reformers were those who appeared incapable of abiding by respectable sexual norms and exercising sexual self-restraint. Although the Union continued to highlight men's responsibility for illegitimacy and the spread of venereal diseases, it began to take a firmer line against sexually irresponsible females. Females as well as males could be sexual offenders.

Members of the Women's Christian Temperance Union tended to conflate criminality, immorality and mental defect. Purity and temperance reformers placed great emphasis upon self-control as the mark of a fully matured and civilised individual. They considered lack of self-control one of the most obvious indicators of mental defect or moral degeneracy. Lack of sexual self-control, whether it be in the form of sexual assaults on females, female promiscuity or male indulgence in homosexual activity, was clear evidence of mental and moral

⁶⁸ Report on Prisons, *AJHR*, 1918, H-20, p.17. The New Plymouth Gaoler noted that he found this class of prisoners very mixed in temperament: 'some are of the vicious type, and others are weaklings, but the majority are nervous and excitable'. He assigned the prisoners work in the quarry - 'the best place for custody and observational purposes'. See also Pratt, pp.228-30.

⁶⁹ WCTU Minutes, Annual Convention, Greymouth, 23 March 1906 (MS Papers 79-057-09/10, ATL).

degeneration. In 1914 Union members defined the moral degenerate in a resolution passed at their annual convention. The resolution proposed that

persons of both sexes who have been convicted of immoral offences ... should be adjudged as moral degenerates, and should be detained in special institutions for an indeterminate time. The sentence to be subject to revision at stated periods.⁷⁰

The reformers argued that sexually uncontrolled females as well as males ought to be detained for an indeterminate period. Detention in special institutions would allow female as well as male 'moral degenerates' to receive the particular care and treatment they needed if they were to reform and return to the community. Detention for an indeterminate period would also protect the community from unrepentant or un-reformable offenders and prevent 'degenerates' from breeding or from spreading venereal disease in the wider community.

The rise of eugenic theory in the late nineteenth and early twentieth centuries greatly influenced feminist and politicians' views of sexual degeneracy and the need to incarcerate or sterilise offenders.⁷¹ Eugenic ideology had emerged alongside growing concerns over the health and welfare of populations between the 1880s and early 1900s. The uncertainties in this period resulting from rapid social change, growing national rivalries and increased international tensions encouraged intense analysis of population quality and quantity. Eugenic ideology appeared to provide solutions to the problem of how to prevent white populations from becoming weak and degenerate. The ideology drew upon theories of inheritance and natural selection developed by Charles Darwin and Francis Galton. Eugenicists focused upon the role played by heredity in the production of society's defective and degenerate individuals and

⁷⁰ WCTU Minutes, Annual Convention, Gisborne, 11 March 1914 (MS Papers 79-057-09/11, ATL).

⁷¹ See Roberta Nicholls, *The Women's Parliament: The National Council of Women of New Zealand 1896-1920* (Wellington: Victoria University Press, 1996), pp.56-67.

supported active intervention in the production of populations. Advocates of 'positive eugenics' emphasised the need to encourage the fit and the healthy to breed while 'negative eugenics' supporters, including members of the New Zealand women's organisations, focused their attentions upon preventing the unfit and the degenerate from reproducing and perpetuating their defective lines.⁷²

Social purity and women's organisations readily accepted eugenic ideology, seeing in it a scientific basis for their moral beliefs. They eagerly co-opted those aspects of the new medical and criminological theories which best supported their existing prejudices. Behaviour long deemed immoral could readily be classified under eugenic theory as evidence of mental or physical degeneration. Reformers portrayed individuals who indulged in inappropriate sexual behaviour as having below-average intelligence and a limited ability to appreciate the consequences of their actions. Such people were not just a moral threat to national health, but also a mental and physical threat. Reformers used the new medical and scientific ideas to shore up and advance their own moral convictions under the guise of science.⁷³

The Women's Christian Temperance Union's concern over moral degeneracy contributed to, and was informed by, a more general debate over mental deficiency in New

⁷² See Carl Jay Bajema, (ed.), *Eugenics: Then & Now* (Stoudsberg, Pennsylvania: Dowden, Hutchinson & Ross, Inc., 1976), pp.1-13, and Jeffrey Weeks, *Sex, Politics and Society*, pp.128-138. For a detailed account of the eugenics movement in New Zealand see Phillip J. Fleming, 'Eugenics in New Zealand 1900-1940' (M.A. Thesis, Massey University, 1981), *passim*.

⁷³ See Stephen Robertson, 'Production not Reproduction: The Problem of Mental Defect in NZ 1900-1939' (B.A. (Hons.) Research Essay, University of Otago, 1989), pp.12, 25-31. See also S. Schlossman and S. Wallach, 'The Crime of Precocious Sexuality: Female Juvenile Delinquency in the Progressive Era', *Harvard Educational Review*, 48, 1 (1978), p.90; Frank Mort, *Dangerous Sexualities: Medico-Moral Politics in England Since 1830* (London: Routledge and Kegan Paul Ltd., 1987), pp.109-112; Lucia Zedner, *Women, Crime, and Custody in Victorian England* (Oxford: Clarendon Press, 1994), Chapter VII ('Not Bad but Mad': The Discovery of Feeble-mindedness').

Zealand during the early 1900s. During these years mental defect was reconceptualised as a problem for society as a whole rather than just a problem for individuals and their families.⁷⁴ At a time of intense concern over population quality, mental defectives provided concerned commentators with direct evidence of degeneracy and weakness. Increased medical and political concern over the impact of the mentally defective on society led to the enactment of the 1911 Mental Defectives Act. Based upon the 1908 report of the British Royal Commission into the Care and Control of the Feeble-minded, the Act extended the definition of the mentally defective to cover 'idiots, imbeciles and the feeble-minded', as well as the 'mentally infirm' and those 'of unsound mind' covered under earlier legislation.⁷⁵ The legislation defined the 'feeble-minded' as

persons who may be capable of earning a living under favourable circumstances, but are incapable from mental deficiency existing from birth or from an early age of competing on equal terms with their normal fellows, or of managing themselves and their affairs with ordinary prudence.⁷⁶

The feeble-minded constituted the 'highest grade', or least afflicted, mental defectives. While they did not necessarily look or sound defective their behaviour demonstrated them to be 'blighted by a mental incapacity for making moral judgments'.⁷⁷ Moral criteria, as much as medical or scientific criteria, defined the feeble-minded.

English, American and Australian studies of the 'discovery' of feeble-mindedness in the late nineteenth and early twentieth centuries have revealed a particular concern over feeble-minded females and their alleged promiscuous habits.⁷⁸ A similar pre-occupation with feeble-

⁷⁴ Robertson, p.10.

⁷⁵ *Ibid.*, pp.18-19.

⁷⁶ 1911 Mental Defectives Act.

⁷⁷ Zedner, p.264. See also Robertson, p.3.

⁷⁸ See Zedner, p.264, regarding England; for an Australian perspective see Stephen Garton, *Medicine and Madness: A Social History of Insanity in New South Wales 1880-1940*

minded females developed in New Zealand during the early 1900s. Many commentators, including members of women's organisations, argued that defective females posed a particularly serious threat to society. They made strong links between mental defect and immorality and argued that feeble-minded females' inability to make appropriate moral judgments and their consequent lack of sexual self-control facilitated the spread of venereal disease and resulted in the births of numerous defective offspring. The Report of the 1922 Committee of Inquiry into Venereal Diseases attributed some of the blame for the spread of disease to 'individuals, especially girls, who are to some degree mentally defective or morally imbecile'. Such girls, noted the report, 'acted as a foci of infection; they are easily approached, and facile victims for men. In spite of a degree of mental or moral defect they may be physically attractive'.⁷⁹ Purity supporters and other commentators used the new scientific theories to label females previously considered 'bad' as 'mad'. Females who failed to abide by respectable norms faced being labelled mentally as well as socially defective. Reformers argued that segregation would protect these vulnerable women and girls from both themselves and the unscrupulous men who found them easy prey.

Although the Mental Defectives Act included the feeble-minded in its definition of the mentally defective, some commentators argued that too many degenerate females escaped its provisions. Frank Hay, Inspector-General of Mental Hospitals and a eugenicist, remarked upon the deficiency in the legislation in his annual report to the Minister of Health in 1913. He called for the introduction of new legislation to cover females,

(Kensington: New South Wales University Press, 1988), pp.58-60, 77-81; for developments in America, see Peter L. Tylor, "'Denied the Power to Choose the Good': Sexuality and Mental Defect in American Medical Practice 1850-1920", *Journal of Social History*, 10:2, 1977, pp.472-477.

⁷⁹ Report of the Committee of Inquiry into Venereal Diseases, *AJHR*, 1922, H-31a, p.12.

who, among those with whom they habitually associate, would hardly be regarded as feeble-minded, and, having a blunting of the moral sense and a decided pliancy under temptation, are a manifest danger in the community, and should be placed out of harm's way until they become harmless.⁸⁰

The Women's Christian Temperance Union's *White Ribbon* expressed similar sentiments.

Although the paper continued to criticise men's role in the seduction of vulnerable females, it also promoted the institutionalisation of girls of 'weak intellect' and the introduction of measures to curb the fertility of the unfit.⁸¹ The Society for the Protection of Women and Children also supported the detention of 'defective and irresponsible girls'. In 1918 the Society issued a strong protest against the closing down of the Te Oranga reformatory for girls: 'an institution which was filling a much-felt want'.⁸² The National Council of Women similarly continued to demand the segregation or institutionalisation of females who had proved themselves incapable of exercising sexual self control. In 1919 the Council of Women passed a resolution suggesting that 'every mother of more than two illegitimate children by different fathers which become a charge on the state, [should] be regarded as a moral degenerate and detained in a farm colony for an indeterminate period'.⁸³

⁸⁰ Report on Mental Hospitals, *AJHR*, 1913, H-7, p.6. Hay took a leading role in the New Zealand Eugenics Society but became disillusioned when fellow members of the Society ignored evidence of hereditary degeneration in their own families and approved marriages which, according to eugenic principles, ought to have been discouraged: *Eugenics and Insanity* 1922, H-MHD 1 Acc. 1011 8/695 (NA).

⁸¹ *White Ribbon*, June 1906; January 1912, p.9; May 1912, p.10; August 1912, p.9.

⁸² SPWC (Wellington), *Annual Report*, 1918, p.5 (MSx 3292 Acc.91-163, ATL). The Reformatory was established in 1900 in response to concerns over juvenile depravity but was closed in 1918. On the history of the institution see Bronwyn Dalley, 'From Demi-Mondes to Slaveys: Aspects of the Management of the Te Oranga Reformatory for Delinquent Young Women, 1900-1918', in B. Brookes et al (eds.), *Women in History II: Essays on Women in New Zealand* (Wellington: Bridget Williams Books, 1992) and Beryl Hughes, 'The Enquiry into the Te Oranga Girls Home, 1908', *Women's Studies Journal* 4:1 (September 1988).

⁸³ NCW Minutes, Annual Conference, Wellington, 8 September 1919, p.4 (MS Papers 1371-126, ATL).

V

Concerns over the activities of feeble-minded females, men who sexually assaulted women and children and men who engaged in 'unnatural acts' came to a head during the early 1920s. The war years had exacerbated fears over the health and strength of the nation and the impact of degenerates upon society as a whole. Reformers argued that vigilance was required if New Zealand was to retain its status as an 'ideal society', relatively free of the evils that beset the old world.⁸⁴ The National Council of Women became particularly vocal after the war. Echoing a statement issued by the International Council of Women in 1920, the New Zealand Council of Women argued that

universal steps [should] be taken to segregate, under medical care until cure is effected, all persons who have proved themselves incapable of sexual control by being convicted of one or more serious sexual offences.⁸⁵

Together with the Women's Christian Temperance Union and the Society for the Protection of Women and Children, the National Council of Women stepped up the campaign for stricter state controls upon sexual offenders, moral degenerates and the mentally defective.

However, it was not until the New Zealand Prisons Board and the North Canterbury Hospital Board added their voices to calls for reform that politicians began to take note of feminist and social purity concerns. In 1921 the Prisons Board suggested that the Government take a more scientific approach towards the treatment of men convicted of unnatural offences and sexual assaults on children. The Board passed the following resolution:

Whereas an increasing number of sexual offences has been the subject of frequent and serious judicial comment, especially in cases where young children were the victims, or the very serious nature of the charge connoted a perversion

⁸⁴ Erik Olssen, 'Towards a New Society', in G.W. Rice (ed), *The Oxford History of New Zealand* (Auckland: Oxford University Press, 1992), p.278.

⁸⁵ NCW Minutes, Annual Conference, Wellington, 1921, pp.7, 9 (MS Papers 1371-126, ATL).

dangerous to the moral well-being of society; and, as the experience of the Board in dealing with prisoners of this class accords, as far as it goes, with the now generally accepted opinion that, with certain exceptions, persons committing unnatural offences labour under physical disease or disability, or mental deficiency or disorder, or both, which accounts for the sexual perversion and the morbid character of the offence charged: It is resolved by the Prisons Board to strongly recommend to the Government an amendment to the Crimes Act under which such offenders could be dealt with scientifically -

- (1.) Before sentence is pronounced, by furnishing expert medical or surgical reports or evidence;
- (2.) By sanctioning an indeterminate sentence;
- (3.) By segregating persons so sentenced and subjecting them, under proper safeguards, to any medical or surgical treatment which may be deemed necessary or expedient either for their own good or in the public interest.⁸⁶

The women's organisations enthusiastically endorsed the Prison Board's recommendation.⁸⁷

The Government initially proved reluctant to take immediate action on the problems identified by the Prisons Board and the women's organisations. However, continued lobbying by the Board and the reformers kept the two issues before the public eye. Other organisations gradually joined the call for government action. Alarmed at the 'uncontrolled fecundity' of the mentally defective and at the number of reported sexual offences, 'many of a most revolting character', the North Canterbury Hospital Board conducted its own investigation into the control and care of degenerates. The Board passed its recommendations on to the Minister of Health.⁸⁸

⁸⁶ Report on Prisons, *AJHR*, 1921, H-20A, p.4. The members of the Board included Frank Hay (Inspector-General of Mental Hospitals), Sir Robert Stout (former Premier), Sir George Fenwick (Government appointee and vice-president of the Patient' and Prisoners' Aid Society), Edwin Hall, C.B. Jordan, C. E. Matthews (the Under-Secretary for Justice and Controller-General of Prisons) and William Reece.

⁸⁷ SPWC (Wellington), Annual Report, 1921-22, p.6 (MSx 3293 Acc.91-163, ATL); WCTU Minutes, Annual Convention, Hamilton, 29 March 1922 (MS Papers 79-057-09/14, ATL). The National Council of Women expressed its support for the principles of the Board's resolution in 1923: see NCW Minutes, Annual Conference, Auckland, 1923, pp.32-33 (MS Papers 1371-126, ATL).

⁸⁸ Report - 1924 Committee of Inquiry, p.2.

The Government finally acknowledged the depth of concern in 1924 and established an official Committee of Inquiry into Mental Defectives and Sexual Offenders.

In 1921 the Prisons Board had declared its support for medical rather than moral solutions for sexual offending. The makeup of the seven member committee reveals a similar acceptance among politicians that the problems of mental defectiveness and sexual offending could best be understood, and perhaps solved, by medical experts. The Minister of Health, Sir Maui Pomare, appointed four prominent doctors to the Committee: Sir Donald McGavin, a former army surgeon and Director-General of Medical Services, Defence Department; Sir Frederic Truby King, specialist in mental health, Director of Child Welfare (Department of Health) and the former Medical Superintendent of Seacliff Lunatic Asylum; J.Sands Elliot, Chairman of the New Zealand branch of the British Medical Association; and Ada Paterson, Director of School Hygiene, Department of Health. The remaining three members of the Committee included W.H Triggs, Legislative Councillor and Chairman of the Committee; C.E. Matthews, the Under-Secretary for Justice and Controller-General of Prisons; and John Beck, Officer in Charge of Special Schools Branch, Education Department.⁸⁹

The dominance of the Committee by medical professionals was an official acknowledgment of doctors' expertise in the increasingly linked fields of mental health and sexual degeneracy. The rise of hereditarian ideologies in the late nineteenth century and the emergence of genetics in the early twentieth century encouraged politicians to look to the doctors for explanations of deviant social behaviour. Environmentalist theories, which argued that poor environments produced weak and degenerate individuals, were still prevalent.

⁸⁹ On McGavin see *DNZB*, Vol.III, pp.294-95; King, *DNZB*, Vol.II, pp.257-59; Elliot, *DNZB*, Vol.III, p.151; Beck, *ENZ*, Vol.I, pp.175-76.

However, theories which emphasised biological and psychological explanations for aberrant behaviours had become increasingly popular. The failure of environmentalist solutions to solve many social problems encouraged increased acceptance of theories based upon heredity, evolution and race. While heredity-based theories were not new they were more widely accepted. The rise of the eugenics movement owed much to the new interest accorded hereditarian theories.⁹⁰ At least two of the doctors on the committee, King and Paterson, and Prisons Controller C.E. Matthews held strong eugenic views.⁹¹

Stephen Garton has argued with regard to Australia that it is misleading to attempt to paint environmentalist and eugenic views as polar opposites. He has asserted that they formed 'part of a single and particular discursive formation'.⁹² Individuals placed different emphasis upon hereditarian and environmentalist theories but sometimes combined the two when offering solutions to social problems. New Zealand doctors and reformers similarly drew upon hereditarian and environmentalist theories. King and Paterson were positive eugenicists who argued in favour of encouraging the fittest members of society to have more children. However, they also favoured state-sponsored environmentalist solutions to social problems. King promoted interventions intended to improve maternal and infant health and Paterson became involved in the health camp movement which sought to improve child health by placing

⁹⁰ Stephen Garton, 'Sir Charles Mackellar: Psychiatry, Eugenics and Child Welfare in New South Wales', *Historical Studies* 22:86 (April 1986), p.24.

⁹¹ Philippa Mein Smith, *Maternity in Dispute: New Zealand, 1920-1939* (Wellington: Historical Branch, Internal Affairs, 1986), p.2; Robertson, p.89; Evidence - Committee of Enquiry into Mental Defectives and Sex Offenders 1924 H 3/13, W1628, p.529 (NA).

⁹² Stephen Garton, 'Sound Minds and Healthy Bodies: Re-Considering Eugenics in Australia, 1914-1940', *Australian Historical Studies* 26:103 (October 1994), p.166. See also James Messerschmidt, 'Feminism, Criminology, and the Rise of the Female Sex "Delinquent", 1880-1930', *Contemporary Crises* 11:3 (1987), pp.257-58.

deprived children in healthier environments.⁹³ The women's organisations supplemented their earlier environmentalist views with hereditarian theories. Their increased focus upon the 'feeble-minded' female delinquent owed much to disillusionment over the persistent immoral behaviour of some females. However, while they increasingly drew upon hereditarian and eugenic theories to explain male and female sexual 'depravity', they continued to support environmentalist reform strategies.

The presence on the Committee of the four doctors and an educationalist (Beck) also indicates political support for a more scientific and professional approach to social problems. During the late nineteenth century, much of the focus on social problems had revolved around concepts of benevolence and moral reform. However, the rise of concepts of national efficiency, racial hygiene and scientific management during the early twentieth century and the rise of the middle-class professionals encouraged increased acknowledgment of the authority of the 'experts'. Doctors promoted themselves as authorities in the fields of sexual and mental health while educationalists presented themselves as the experts on the diagnosis and training of mentally defective children. Garton has described the new middle-class professionals as

the bearers of a new secular ethic which posited science as the rational instrument for social progress, superior and more efficient than the well-intentioned but selective practices of nineteenth century benevolence and moral reform.⁹⁴

This secular ethic was well established in political circles by the 1920s. Pomare's Committee represented the success of the 'experts' in claiming scientific-based authority over social problems concerning sexual and mental health.

⁹³ Mein Smith, p.2; G.H. Scholefield (ed.), *Dictionary of New Zealand Biography*, Vol.II (Wellington: Department of Internal Affairs, 1940), p.151.

⁹⁴ Stephen Garton, 'The "Tyranny" of Doctors: The Citizen's Liberty League in New South Wales, 1920-39', *Australian Historical Studies* 24:97 (October 1991), p.340.

Pomare directed the Committee to inquire into and report upon the necessity for special care and treatment of mental defectives and sexual offenders in New Zealand. In pursuit of this end the Committee spent three months listening to evidence presented by doctors, prison officials, social purity and women's organisations, social workers, educationalists, churchmen, members of the judiciary and academics. The Committee also visited reformatories, prisons, special schools and mental asylums from Auckland to Invercargill. A survey of the evidence received by the Committee reveals the identification of three main types of sexual degenerates: the oversexed, and frequently feeble-minded, female; the paedophile; and men who engaged in homosexual activity.

Concerns expressed over female 'sexual perverts' focused upon female heterosexual promiscuity. Unlike male homosexuality, lesbianism did not attract significant public or political attention at this time.⁹⁵ The concerns expressed in evidence given to the Committee encompassed a sliding scale of female offenders. At one end could be found girls who were undoubtedly mentally defective. At the other end were girls who were 'oversexed' but who were not necessarily feeble-minded.⁹⁶ Different commentators located problem females at different points on the spectrum. Dr Clark, a Napier school medical officer, argued that nearly all females admitted to charitable maternity homes more than once, and most of those admitted

⁹⁵ See Sandra Coney (ed.), *Standing in the Sunshine: A History of New Zealand Women Since they Won the Vote* (Auckland: Penguin, 1993), pp.170-71, regarding the history of lesbianism in New Zealand. Regarding early sexology and lesbianism see Weeks, *Coming Out*, pp.65-66, 87-111. See also Susan Edwards, *Female Sexuality and the Law* (Oxford: Martin Robertson, 1981), pp.43-45, and Lillian Faderman, *Surpassing the Love of Men: Romantic Friendship and Love Between Women from the Renaissance to the Present* (New York: William Morrow & Co., 1981).

⁹⁶ See Elizabeth Lunbeck, '"A New Generation of Women": Progressive Psychiatrists and the Hypersexual Female', *Feminist Studies* 13:3 (1987), regarding American psychiatrists' attitudes to 'immoral women who were too intelligent to be feeble-minded [but] too defective to be normal', p.524.

only once, were mentally deficient.⁹⁷ However, Joan Murray, a representative of the Society for the Protection of Women and Children, argued that not all girls who went astray were 'mentally subnormal', indeed she thought that some 'seem[ed] perfectly natural, nice girls'.⁹⁸ Michael Hawkins, Superintendent of the Invercargill Borstal Institute, defined sex perversion in young girls as 'an intense longing for sexual connection' and said that in most cases such feelings generally only lasted for one week out of each month. Hawkins suggested that marriage would probably settle such girls down. However, he also noted that some girls appeared to be 'hopeless perverts whom nothing will cure'. Such females, he argued, 'should certainly be segregated for life as they are a distinct menace'.⁹⁹ The National Council of Women presented a list of five different types of female sexual offenders. These included females who could not be held responsible for their own behaviour due to mental or moral weakness, women and girls who were amoral or of low mental and moral character, and 'those over-sexed who are of attractive appearance and therefore a danger to men of a better type than those who will consort with women of undoubted feeble-minds'.¹⁰⁰

Comments made concerning the causes of female 'sex perversion' reveal the influence of both hereditarian and environmentalist discourses. Many of those who gave evidence emphasised the hereditary nature of mental defectiveness and argued that feeble-minded girls' lack of sexual self control was only too likely to result in their producing similarly afflicted children. However, other commentators acknowledged that poor environments resulted in some girls falling into promiscuous habits. Mrs McHugh, a Health Patrol Officer, informed the

⁹⁷ Evidence - 1924 Committee of Inquiry into Mental Defectives and Sexual Offenders, H3/13 W1628 (NA), p.13.

⁹⁸ *Ibid.*, pp.374-75.

⁹⁹ *Ibid.*, pp.420-22.

¹⁰⁰ *Ibid.*, p.533.

Committee that in many cases where girls had gone astray their problems could be traced to childhood sexual abuse. The greatest need of such girls, she argued, was a good home life and the opportunity to participate in clubs and evening classes.¹⁰¹

There was a general consensus among those who gave evidence that something had to be done to control feeble-minded and/or oversexed girls. Temporary institutionalisation, long-term segregation and sterilisation were the most commonly suggested solutions. Institutionalisation and segregation satisfied hereditarian and environmentalist concerns. Institutionalising or segregating problem females provided a eugenic solution in that it took them out of sexual circulation and prevented them from reproducing. However, it also presented an opportunity to reform those who were not considered 'incurable' degenerates. Dr Staley, an English Borstal medical officer, described his experience of girls sent to Borstal institutions:

Large numbers of these girls were sexual perverts, living simply for the love of the excitement - perhaps 20 or 30 percent - but all of them were well-known prostitutes. You could not say they were all sexual perverts, because they were so young. They were not then thoroughly degraded, and a large number who were certainly not mental defectives were reformed.¹⁰²

Dr F. Bevan-Brown, a consulting physician in Christchurch, suggested that some sexually 'deranged' females could be 'treated' for their condition. He considered the problem of female sexual perversion a medical rather than a criminal or moral question. Proper medical treatment could well provide a solution to the problem for those females who were not mentally defective but whose behaviour demonstrated that they were not 'perfectly normal'.¹⁰³

¹⁰¹ *Ibid.*, p.89.

¹⁰² *Ibid.*, p.141.

¹⁰³ *Ibid.*, pp.516-22.

Many commentators supported long-term or permanent segregation of girls and women who were clearly mentally defective or who appeared to be habitual moral degenerates. John Caughley, the Director of Education, urged the Committee to take urgent action to ensure that all feeble-minded girls were thoroughly guarded. The segregation of these girls, he declared, would remove an important source of 'racial deterioration'. It would also save the Government the cost of providing for a future generation of defectives.¹⁰⁴ Dr Hilda Northcroft, the Secretary of the Auckland Branch of the National Council of Women, reminded the Committee of comments made the previous year by the Council: mentally defective females were a danger to themselves, to the community and 'a much more serious danger to the race'. Permanent segregation of defectives would satisfy eugenic principles by preventing them spreading venereal disease or producing future generations of degenerates.¹⁰⁵

Most commentators agreed that oversexed girls, whether feeble-minded or simply immoral, ought to be detained for their own and society's good.¹⁰⁶ However, some individuals suggested that sterilisation might also have a positive effect. Dr R.M. Beattie, the Medical Superintendent of Auckland Mental Hospital, supported the 'desexualisation' of truly incorrigible feeble-minded girls.¹⁰⁷ However, other commentators, including the National Council of Women's Dr Northcroft, suggested that sterilising feeble-minded females could lead to an increase in immorality.¹⁰⁸ Sterilised females might not be able to breed, but they remained

¹⁰⁴ *Ibid.*, pp.17-18.

¹⁰⁵ NCW Minutes, National Conference, Auckland, 1923, p.31a (MS Papers 1371-126, ATL); Evidence - 1924 Committee of Inquiry, p.125.

¹⁰⁶ Evidence - 1924 Committee of Inquiry, pp.420, 428, 463, 466.

¹⁰⁷ *Ibid.*, p.300

¹⁰⁸ *Ibid.*, pp.127-28.

free to indulge in immoral activities and spread venereal disease.¹⁰⁹ However, Dr Northcroft noted that while she opposed sterilisation of the 'merely backward type' she was willing to consider this option for the 'definitely subnormal'.¹¹⁰ Dr Courtney Llewellyn Nedwill, a prison medical officer, highlighted the potential dangers associated with sterilisation. Dr Nedwill warned the Committee that such operations could cause mental problems or result in the death of the subject. Committee member Charles Matthews, the Controller-General of Prisons, noted that the risk of death, 'so far as eugenics are concerned', might be a minor evil.¹¹¹ However, most commentators appear to have dismissed sterilisation of defective and degenerate females in favour of the less risky, and more effective, alternative of segregation in farm colonies or other institutions.

Concerns expressed over the feeble-minded female and the over-sexed girl reveal a significant medicalisation of morality. Although several commentators declared that not all problem females were mentally defective, most made strong links between female immorality and mental defect. Girls' sexual or moral behaviour was considered a key indicator of their mental level. Nineteenth-century beliefs about female sexual passivity underpinned the pathologising of female sexual activity during the early twentieth century.¹¹² Persistent belief in women's essential 'natural' purity together with the rise of medical explanations of 'deviant' social behaviour encouraged a labelling of sexually active single females as inherently defective and degenerate. Nineteenth-century morality, which damned non-marital sexuality, and female

¹⁰⁹ Henry Binstead, lecturer in Psychology at Auckland Training College, argued that sterilisation offered greater opportunities for a descent into prostitution, *ibid.*, p.241.

¹¹⁰ *Ibid.*, p.127.

¹¹¹ *Ibid.*, pp.539-30.

¹¹² George Chauncey, Jr., 'From Sexual Inversion to Homosexuality: Medicine and the Changing Conceptualization of Female Deviance,' *Salmagundi* 58-59 (1982-1983), pp.117-19.

'immorality' in particular, provided the basis for 'medical' judgments about promiscuous girls' behaviour. Continued indulgence in behaviour which exposed girls to the dangers of venereal disease and the shame of bearing an illegitimate child also encouraged a close association of mental defect with female immorality.¹¹³ Girls and women who persisted in behaviour considered immoral and dangerous by middle-class reformers and professionals risked being categorised as defectives or delinquents on the grounds of their sexual behaviour alone.

Most of those who addressed the problem of female immorality focused their remarks upon the need to contain and control defective and degenerate females. Only a few discussed the role of men in the dissemination of venereal disease or in the production of defective or illegitimate children. Catholic priest Kevin McGrath declared that he heard too much condemnation of women and not enough of men. However, despite urging greater purity for men McGrath supported the segregation of feeble-minded girls as the most effective way of solving the problem.¹¹⁴ Although the National Council of Women attributed greater guilt to the man who took advantage of a mentally defective female 'to gratify his sex needs', the Council also focused on the detention of females rather than their male seducers.¹¹⁵

The feminists' willingness to co-opt hereditarian and eugenicist theories resulted in a closing of the gap between old-style patriarchal and feminist discourses.¹¹⁶ While the feminists continued to emphasise male responsibility for the seduction and assault of girls and women, they increasingly focused their attention upon females who were either unable or unwilling to

¹¹³ Mathew Thomson, 'Family, Community and State: The Micro-Politics of Mental Deficiency' in D. Wright & A. Digby (eds.), *From Idiocy to Mental Deficiency: Historical Perspectives on People with Learning Disabilities* (London & New York: Routledge, 1996), pp.210-11.

¹¹⁴ Evidence - 1924 Committee of Inquiry, p.95.

¹¹⁵ *Ibid.*, p.531.

¹¹⁶ See Messerschmidt, p.260.

conform to their social purity ethic. Their acceptance of the danger posed to 'the race' by defective and degenerate females as well as males encouraged feminists to broaden their view beyond that of male offender/female victim to encompass a female offender: the feeble-minded or over-sexed girl. Such girls undermined feminists' continued attempts to portray women as society's moral leaders. Their behaviour not only violated eugenic principles, it violated the feminist definition of what it meant to be female. Feminists' rejection of non-marital female sexual activity and their adherence to hereditarian and eugenic roles significantly contributed to the early twentieth-century construction of the 'feeble-minded' and/or 'over-sexed' girl.¹¹⁷

Discussion of male sexual offending canvassed some of the issues covered in regard to female offending. Commentators discussed the links, or lack of them, between male sexual offending and mental degeneracy. They also examined the possible advantages and disadvantages of segregation and sterilisation of offenders. However, commentators did not identify a parallel group of 'feeble-minded' or 'oversexed' males. In contrast to 'immoral' females, men who were merely promiscuous - provided they confined their attentions to older girls and adult women - generally escaped the scrutiny of the Committee. The spectrum of male and female sexual 'perversion' was a gendered spectrum. Continued widespread belief in an innate aggressive male heterosexual sex drive meant that commentators used different criteria when assessing male and female promiscuity. Male heterosexual promiscuity was not associated with mental defect in the way that female promiscuity was. However, mental defect was considered a possible cause of male homosexuality or paedophilia.

¹¹⁷ See Barbara Brookes, 'A Weakness for Strong Subjects: The Women's Movement and Sexuality', *NZJH* 27:2 (October 1993), p.145-46.

Concerns expressed over male sexual offending focused upon paedophiles and homosexuals. As in previous years, rape and assault of adult women received scant attention from commentators, including representatives of the women's organisations. Those who participated in the Inquiry focused upon the most extreme, and most 'unnatural' of offences. Offences against adult women, while reprehensible, failed to generate the emotions associated with assault of vulnerable children or with male homosexual activity.

Contributors to the Inquiry identified a range of causes of male sexual 'perversion'. Heredity and environment were both considered influential. Causes of perverted behaviour included a sub-normal mentality, previous corruption by an older male, indulgence in self-abuse, inherited perverted sexual instincts, physical abnormalities and a lack of 'legalised outlets for sexual passion' for the unmarried (a reference to licensed brothels).¹¹⁸

However, while some commentators argued that homosexuals and paedophiles were mentally defective because 'otherwise they would not be perverts', a significant number disputed the connection made between perversion and mental defect.¹¹⁹ It is clear that by this time the theories of prominent sexologists such as Havelock Ellis had had a significant impact on many medical and penal professionals. Ellis had argued that congenital 'inversion' or homosexuality was not necessarily pathological or proof of mental degeneration.¹²⁰ Several contributors to the Inquiry noted that it was both simplistic and incorrect to label all offenders as defectives or degenerates. Thomas Vincent, the Superintendent of Mt Eden Prison, and Dr A.C. Thompson, a representative of the British Medical Association, noted that sex offenders were

¹¹⁸ Evidence - 1924 Committee of Inquiry, pp.105, 130, 166, 268-9, 304, 308., 339.

¹¹⁹ *Ibid.*, p.304.

¹²⁰ Weeks, *Coming Out*, pp.62-65.

frequently of high intellect.¹²¹ Dr Stuart Moore, a practitioner in Dunedin, argued that sexual perversion was quite different from mental defect. He declared that sex perversion had existed in all ages, in all forms of civilisation, within all degrees of intellectual development and in all social strata. 'The possibility of sexual perversion', he argued, 'is universal. It exists potentially in everybody and an individual becomes civilised by overcoming that'.¹²² Catholic priest Kevin McGrath similarly emphasised the need to acknowledge the complex nature of sexual perversion. 'All sex criminals are not degenerates', he asserted, 'and must not be bracketed in a homogenous class out of which no good can come'.¹²³

Nevertheless, despite acknowledging the intelligence of some male sexual offenders, contributors to the Inquiry generally spoke of their behaviour with great disgust. Commentators reserved the bulk of their vitriol for men who assaulted little children. The idealisation of children as sexually pure and vulnerable innocents lent particularly horrific and sinister overtones to these cases. Mrs C.E. Kirk, the Secretary of the Society for the Protection of Women and Children, declared that the ruin of a child's innocence amounted to 'moral murder'. The 'damage to the body, nerves, and character of both boys and girls', she argued, 'is incalculable'.

When a little girl is the victim the ruin of the body is accompanied by a stain on the mind and soul that can never be removed ... In the case of boys they become possessed of a horrible and sinister knowledge which may return in the form of a temptation to them for the rest of their lives and cause them to follow in the footsteps of their betrayers.¹²⁴

¹²¹ Evidence - 1924 Committee of Inquiry, pp.308, 540.

¹²² *Ibid.*, pp.496-99. Dr Kenneth Mackenzie, a representative of the British Medical Association, similarly argued that offenders ranged in age from puberty to senility and that their mentalities ranged from the definitely subnormal to the highly intellectual, p.130.

¹²³ *Ibid.*, p.91.

¹²⁴ *Ibid.*, p.122.

The loss of childhood innocence forever marked the victim who, it appeared, was only too likely to corrupt others in his or her turn. Many commentators clearly placed sex assaults on children at the extreme end of the spectrum of male sexual perversion.

Homosexual offences committed by adult men upon each other evoked a more complicated response. Although all commentators agreed that homosexuality should be discouraged, some displayed a degree of sympathy towards homosexuals born into their condition.¹²⁵ Dr Gribben, the Superintendent of Waikeria Reformatory, went so far as to declare that 'As long as homo-sexualists are working amongst themselves it is all right'. The danger came when these men interfered with boys.¹²⁶ However, Michael Hawkins, the Invercargill Borstal Superintendent, took a very different view. He also condemned men who tampered with young boys, but placed the passive homosexual at the extreme end of the perversion spectrum. Hawkins declared that in his opinion, 'the worst pervert of all is the one who flagrantly offers himself for the purpose of sodomy'.¹²⁷ Most commentators expressed extreme distaste for homosexuals who failed to control their 'perverted' instincts, whether they confined their attentions to adults or boys. Despite greater awareness of the arguments of theorists such as Havelock Ellis, none of the commentators surveyed, apart from Gribben, suggested that private homosexual activity between consenting adult males be tolerated or decriminalised.

As in the case of female sexual 'perverts', contributors to the inquiry considered a range of possible solutions to male sexual offending including sterilising, 'desexualising' (castrating)

¹²⁵ *Ibid.*, pp.496-500.

¹²⁶ *Ibid.*, p.326.

¹²⁷ *Ibid.*, p.420.

or segregating male offenders.¹²⁸ Advocates of sterilisation and castration emphasised the eugenic benefits of preventing offenders from reproducing. However, they also saw sterilisation or castration as potential methods of reducing offender's sex drives or rendering them incapable of carrying out their perverted desires.¹²⁹ For some commentators, surgery appeared an ideal solution to the problem of what to do with intelligent offenders who still had much to offer the world and whose incarceration would deprive society of their various skills. 'Take the case of Oscar Wilde', declared Dr R.M. Beattie. A 'man like that shut up for life would be a loss to the whole world. I would desexualise him and let him loose to a large extent'.¹³⁰

However, most contributors to the Inquiry, including most of the doctors, expressed doubts as to the efficacy of sterilisation or castration in preventing 'perverts' from re-offending.¹³¹ Although most commentators endorsed sterilisation through vasectomies as a means of reducing the propagation of the unfit, many expressed considerable concern over the more radical operation. Opponents of castration offered a range of reasons for their opposition to desexualisation. Dr Jeffreys, the Medical Superintendent of Porirua Mental Hospital, feared the mental effects of desexualising males. Jeffreys suggested that castrated offenders would become effeminate and lose their mental acuity.¹³² Borstal superintendent Michael Hawkins opposed compulsory castration on the grounds that it caused insanity and resentment.

¹²⁸ Sterilisation had already been made law in several states in the United States of America.

¹²⁹ Evidence - 1924 Committee of Inquiry, pp.2-3, 26, 88, 106, 123, 130a-b, 272, 296, 426, 500.

¹³⁰ *Ibid.*, p.296. Beattie also mentioned the case of a 'lawyer mayor' jailed for fifteen years for homosexual acts. Had the man been 'desexualised', he argued, the country would have been saved the expense of detaining him in jail for such a long period.

¹³¹ *Ibid.*, p.172. Dr Robertson explained to the Committee that the New Zealand branch of the British Medical Association had passed a resolution declaring that it could make no recommendation for sexual desexualisation in the treatment of the adult pervert. The only safeguard for children was the permanent segregation of offenders in prisons or farm colonies.

¹³² *Ibid.*, p.117.

Furthermore, he did not believe that the operation eliminated sexual desire - a castrated offender retained the power to destroy a child's innocence.¹³³ Dr Kenneth Mackenzie similarly argued that desexualisation could not be guaranteed to abolish sexual potency and desire.¹³⁴ Other commentators raised the moral dimension of sterilising or castrating offenders. Dr Bevan Brown, expressed his personal objection to sterilisation on the grounds that it was a mutilation, a clumsy way of achieving the desired end and constituted a tremendous interference with individual liberty.¹³⁵ Archibald McLean, a representative of the Prisoners' Aid Society, introduced religion into the debate. The radical operation, he declared, went against Christian conscience and sentiment. It had no place in the twentieth century.¹³⁶

Although a few commentators also raised the possibilities of reforming offenders through corporal punishment or by psycho-analysis, most favoured surgery or segregation.¹³⁷ However, proposals to segregate all male sex offenders also caused some concern. The Reverend F.R. Jeffreys, a representative of the Auckland Community Welfare Council, feared the consequences of complete segregation of male 'perverts':

Would you not be creating an opportunity for the committal of these horrible unnatural offences? Let several of these men get together and they will be worse than the beasts of the field, but women need have no fear of them at all.¹³⁸

¹³³ *Ibid.*, p.420.

¹³⁴ *Ibid.*, p.130.

¹³⁵ *Ibid.*, p.520.

¹³⁶ *Ibid.*, p.450.

¹³⁷ The Auckland branch of the National Council of Women supported the flogging of those men considered to be of sound and normal mind: *ibid.*, p.145. Charles Morton Carter, a representative of the Young Citizens' League, agreed. He declared that 'The beast in human form, who has thrown away his manhood, whether through drink or license, should be taught, through his skin, to respect the persons of others', p.264. Dr Stuart Moore stands out for his support for psycho-analysis as a means of reforming offenders, p.497.

¹³⁸ *Ibid.*, p.277.

Dr Kenneth Mackenzie doubted that offenders could be reformed but argued that perpetual segregation was too harsh a penalty for an offender 'who may owe his forebears an uncontrollable perverted sexual instinct'.¹³⁹ Charles Matthews, Committee member and Controller of Prisons mentioned his own reservations on this matter. He acknowledged the feelings of those who supported segregation but reminded his fellow Committee members that the numbers involved made this solution impracticable for all offenders.¹⁴⁰

The Committee spent two and a half months analysing the evidence received before reporting back to the Minister. In its report the Committee made a clear distinction between the two issues of mental defectiveness and sexual offending. Mindful of the fact that many members of the public conflated the two issues, the Committee emphasised the need to treat mental defect and sex offending as two separate questions. It 'is very far from correct', the report stated, 'to suppose that all feeble-minded persons are sex offenders, or that all sex offenders are mentally defective'.¹⁴¹ In the first section of its report the Committee focused upon the problem of the feeble-minded. This section included discussion of the 'oversexed girl'. In the event, little attempt had been made to distinguish between female sexual perversion and mental defect. The second section of the report focused upon male sexual offending.

The Committee agreed with many of its eugenically-minded informants that 'the unrestricted multiplication of feeble-minded members of the community is a most serious menace to the future welfare and happiness of the Dominion'.¹⁴² Its report discussed the various influences of heredity and environment upon the proliferation of the unfit and examined the best

¹³⁹ *Ibid.*, p.130.

¹⁴⁰ *Ibid.*, p.541.

¹⁴¹ Report - 1924 Committee of Inquiry, p.5.

¹⁴² *Ibid.*, p.5.

ways of caring for or controlling society's defective members. The Committee concluded that sterilisation of the feeble-minded 'was not a high price to pay for liberty'.¹⁴³ It recommended that a Eugenic Board be established and that it be granted the power to sterilise or segregate defectives depending upon the circumstances of each case. The Committee did not report in detail upon the cases of 'oversexed' girls who could not be classified as mentally defective. However, it recommended that these girls be confined to an institution 'where there is provision for segregation and treatment of refractory cases'. 'In many cases', the Committee declared, 'these young women should be kept under control for a considerable period. Many are hopelessly immoral, and in the interests of society should not be allowed their liberty'.¹⁴⁴ Eugenic and hereditarian views which emphasised the need to protect society from such young women appear to have dominated the Committee's thinking. 'Treatment' and reform of immoral girls was a secondary concern. The most important thing was to prevent take them out of sexual circulation.

In the second section of its report the Committee explored a range of options for treating or punishing male sexual offenders. The Committee concluded that castration would cause more problems than it solved but noted that it lacked sufficient evidence to make a definite decision on whether or not male offenders should be sterilised. Its report recommended that the proposed Eugenics Board investigate this matter in depth. In line with the earlier recommendations of the Prisons Board, the Committee also proposed that all male sex offenders be examined by a doctor and a psychiatrist before being committed for trial. It similarly endorsed the Prisons Board's suggestion that the Crimes Act be amended to allow the Courts to

¹⁴³ *Ibid.*, p.20.

¹⁴⁴ *Ibid.*, p.16.

impose an indeterminate sentences upon first-time sexual offenders as well as 'habitual' offenders.¹⁴⁵

Newspaper editors and women's organisations enthusiastically endorsed the Committee's report and urged the politicians to implement its recommendations.¹⁴⁶ However, the Government proved reluctant to take immediate action on the twin problems of mental defect and sexual offending. 1925 was an election year and the Government may have wished to avoid inflaming the electorate by embarking on major changes to the legislation. However, it also appears that powerful figures within the Prisons, Education and Mental Health Departments disagreed with important aspects of the Report. The Prisons and Education Departments declined to implement most of the Committee's recommendations. The Prisons Department failed to introduce indeterminate sentences for first time sexual offenders.¹⁴⁷ The Education Department did, however, respond to the Committee's concerns about oversexed girls and in 1927 re-opened the Te Oranga Reformatory to handle girls with 'anti-social' tendencies.¹⁴⁸ Although the Mental Hospitals Department, guided by Truby King, began to draft legislation, King's successor, Dr Theodore Gray, rejected some of the Committee's recommendations. Pomare's successor as Minister of Health, J.A. Young, also had strong reservations about the draft Bill. He suspected that it would prove unpopular with many members of the public who considered that sterilisation and permanent segregation of the

¹⁴⁵ *Ibid.*, pp.26-28.

¹⁴⁶ WCTU Minutes, Annual Convention, Dunedin, March/April 1925 (MS Papers 79-057-09/15, ATL); NCW Minutes, Annual Conference, Hamilton, September 1925, p.50 (MS Papers 1371-126, ATL); Robertson, p.99.

¹⁴⁷ Robertson, pp.101-103. See Robertson, Chapter IV, for a detailed analysis of events between 1924 and 1928.

¹⁴⁸ K.J. Studholme, 'The Child: A Comparative Study 1920s-50s & 1980s-90s on the Discourse that Surrounds the Child and Sexuality' (B.A. (Hons.) Research Essay, University of Otago, 1995), p.26.

mentally defective were unacceptable infringements of personal liberty, especially in cases of mild defectiveness.

Young's concerns proved well-founded. When a Mental Defectives Bill was finally introduced into Parliament politicians and members of the public alike heavily criticised its provisions. Much of the public criticism of the Bill came from academics including educationalists, philosophers and psychologists. They opposed the strong hereditarian focus of the proposed legislation and argued that it did not pay sufficient attention to environmental factors. They also criticised what they saw as an over-emphasis upon medical rather than psychological views of mental deficiency. Psychologists challenged the ability of psychiatrists to diagnose accurately mental defect and declared that too little was known about the problems dealt with in the Bill.¹⁴⁹ Members of the public expressed their fears that proposed legislation would result in children who were merely 'slow' being taken away from their parents. Elizabeth Bulkley wrote a 'nursery rhyme of the future' which encapsulated these fears:

¹⁴⁹ Robertson, pp.121-29.

The Sad Story of Little Richard

"Oh Mother, save me from 'Dr Gray'
 'Cause teacher says he's coming to-day
 And if I'm stupid he'll take me away.
 Oh, Mummie, save me from 'Dr Gray'!"

"I cannot save you, my little child"
 His mummie said and her eyes were wild.
 "You belong to the State, you're no more my child!
 But Oh, my darling, don't stupid be
 Or he'll say we've tainted heredity,
 And must be eradicated - you and me!"¹⁵⁰

Within Parliament, Labour politicians similarly condemned the Bill for its emphasis on heredity rather than environment. After sixteen and a half hours of continuous debate over the Bill in the House of Representatives the politicians dropped the most controversial clauses, including those which dealt with sterilisation of defectives.¹⁵¹

VI

Between the 1880s and the 1920s concerns expressed over sexual 'degeneracy' and 'perversion' underwent marked change. During the late nineteenth century religious groups and feminist and social purity reformers focused upon male heterosexual sexual license. Men who visited prostitutes or who seduced women and girls were criticised on moral grounds for their failure to control their sexual urges. The reformers' attempts to raise the age of consent and repeal the Contagious Diseases Act represented a challenge to a patriarchal morality which accepted men's 'natural' aggressive sexuality and which was prepared for some women to be 'sacrificed' to men's lust so that most women could remain pure. The reformers portrayed prostitutes and seduced girls as victims of rampant male sexuality. They sought increased

¹⁵⁰ Elizabeth Bulkley, Mental Health Defectives Bill, CW 40/5/5 (NA), cited in Robertson, p.123.

¹⁵¹ *Ibid.*, p.129.

legislative protection of girls and established homes where 'fallen' women and girls could be reformed and returned to society.

However, under the influence of hereditarian and eugenic ideologies, feminist and social purity discourse increasingly reflected medical views of anti-social or deviant behaviours. The feminists co-opted medical ideas which supported their purity views. Self-control was central to the social purity ethic embraced by the feminists. Medical theories which explained male and female lack of sexual self-control in terms of mental defect provided the feminists with a new explanation for behaviour of those men and women who refused to abide by the norms of 'respectable' society. While they continued to support environmentalists' solutions - and in particular, moral therapy which sought the reform of 'fallen' women and delinquent girls - they increasingly argued that confirmed degenerates, male and female, be incarcerated for their own and society's protection. Feminists' acceptance of eugenic ideology led to a wider view of the sexual degenerate: women and girls, previously seen primarily as sexual victims, could also be sexual offenders. Eugenic and hereditarian ideologies helped bring about a rapprochement between feminist and traditional patriarchal ideologies. They also placed the feminists in step with the many doctors who similarly supported eugenic ideology. Social purity, patriarchal and medical discourse together led to the construction of the 'feeble-minded female sexual delinquent'.

Concerns over male sexual degeneracy also broadened significantly during the late 1800s and early 1900s. Purity-based concerns over male heterosexual licentiousness were supplemented by new and more intense medically-based concerns over the male 'sex pervert'. Commentators increasingly focused upon paedophiles and homosexuals rather than men who seduced or raped older girls and adult women. This new interest in male sexual 'perversion'

owed much to deep-seated social movements. The rise of the child-saving movement in the late nineteenth century contributed to early twentieth-century concerns over the sexual abuse of children. Pro-natalism, together with ideologies of national efficiency and racial strength, contributed to a new focus upon male homosexuality. Pro-natalist societies are less tolerant of homosexuals than are societies less concerned about rates of reproduction.¹⁵² New Zealand was strongly pro-natalist in this period. However, new ideas about sexual deviance and the possibility of 'curing' homosexual 'perverts' also contributed to rising concern about men who committed 'unnatural' offences. The medicalisation of deviance apparent in Europe and Britain in the late nineteenth century spilled over into medical, penal, political and purity reform discourses in New Zealand in the early 1900s. An alleged increase in unnatural offences and child sex assault cases encouraged medical and penal authorities to demand an official Inquiry into male sexual perversion. The convergence of concerns over sexual offending and mental defect produced the 1924 Committee of Inquiry into New Zealand's male and female 'degenerates' and 'perverts'.

The rise of hereditarian and eugenic ideologies played a major role in bringing about the Committee of Inquiry. Feminist and purity reformers and other supporters of eugenics argued that the danger posed to the nation as a whole was of such magnitude that the state ought to embark upon a thorough investigation of the issues. However, when it came time to act, politicians were faced with considerable public resistance to the Committee's strongly eugenic proposals. Supporters of environmentalist ideologies - psychologists in particular - objected to what they saw as excessive reliance upon heredity. The question of individual liberties also

¹⁵² Anthropologist Dennis Werner, cited in Marvin Harris, *Why Nothing Works: The Anthropology of Daily Life* (New York: Simon and Schuster, 1981) pp.107-111.

arose. Did the state have the right to interfere to such an extent with the freedom of 'mental defectives' who had not yet shown any signs of anti-social behaviour?

Different opinions regarding the right of the state to regulate the lives of 'defectives' and 'degenerates' thwarted eugenic-centred attempts to introduce significant new controls upon New Zealand's 'undesirables'. Despite increased willingness for the state to intervene in citizens' lives on public health grounds, many people opposed what they considered excessive state interference with the liberty of the individual. New medical theories warning against the dangers of allowing the 'unfit' to roam free failed to convince large sections of the public that the state ought to have the power to sterilise defectives and degenerates.

The rise of science and medical authority during the late nineteenth and early twentieth centuries greatly influenced New Zealanders' understandings of sexual 'degeneracy' and 'perversion'. During the 1880s, politicians and social commentators focused upon the moral aspects of sexual offending, whether in the form of male sexual assaults or female promiscuity. During the early 1900s social reformers drew upon medical explanations to support existing moral judgments. However, the medicalisation of 'deviance' rested upon a traditional moral framework which condemned female promiscuity, paedophilia and male homosexuality as fundamentally unnatural and sinful activities. The history of sexual degeneracy and perversion in New Zealand is very much a history of the medicalisation of morality.

CONCLUSION

CONFLICTING AND CONVERGING DISCOURSES

The changes made to New Zealand's sex laws between 1880 and 1925 and the forces behind those changes were not unique to the colony. Where New Zealand differed from other countries largely lay in the timing of the reforms. Reform of New Zealand's sex laws generally occurred in the wake of British or Australian initiatives. Campaigns to amend the marriage laws, repeal the Contagious Diseases Act, raise the age of consent and tighten censorship laws emerged in New Zealand well after they appeared in Britain. However, the relative weakness of the Anglican establishment in the colony and the absence of a strong aristocratic class encouraged earlier reform of some areas of the law: notably about marriage. New Zealand's willingness to move in advance of British law was also heavily influenced by the Australian colonies' eagerness to press ahead without waiting for Britain.

Demographic change, the rise of the middle classes and the decline of old patriarchal, aristocratic codes under the impact of feminist, secularist and medical discourses significantly influenced the changes to the sex laws made in this period. Population increase, the transition from a pioneering to a settled society, urbanisation and economic development engendered specific social problems and tensions which threatened public health and social order. Inspired by utilitarian and evangelical ideologies, social reformers and rising middle-class professionals encouraged increased state intervention to help solve these problems.

Many changes in the sex laws were underpinned by changing views of marriage and the family, together with new ideas about the sexual natures of women, men and children. The rise of affective individualism, companionate marriage and liberal ideologies

significantly influenced the reform of divorce and prostitution laws. Feminist and social purity reformers drew on liberal and companionate marriage discourses to attack the sexual double standard enshrined in legislation and to demand that men adhere to the same standards of sexual purity as women. Changes in affective relations also resulted in changes to laws affecting children. The raising of the age of consent for girls from twelve to sixteen years of age owed much to childhood discourses rooted in the rise of affective relationships.

However, the new views of marriage and the family lauded by the feminists encountered significant opposition from legislators reluctant to accept the validity of these new perspectives. Adherence to traditional patriarchal precepts which placed a high priority upon men's sexual freedom impeded attempts to amend marital legislation and laws regulating prostitution and the age of consent. Support for traditional patriarchal discourse was particularly strong within the non-elected Legislative Council: a bastion of the conservative landed elite dominated by men in their fifties and sixties.¹ The democratically elected and more diverse lower chamber included a higher proportion of younger men who proved more amenable to feminist arguments. The advent of women's suffrage in 1893 did much to encourage the feminisation of sexual discourse within the House of Representatives.

However, it was not until the 1910s that a similar feminisation of the discourse occurred in the upper chamber. A change of personnel in the Council encouraged a more sympathetic climate: only twelve of the forty Councillors serving in 1910 had been members of the

¹ Roberta Nicholls, *The Women's Parliament: The National Council of Women of New Zealand 1896-1920* (Wellington: Victoria University Press, 1996), p.28. See W.K. Jackson, *The New Zealand Legislative Council: A Study of the Establishment, Failure and Abolition of an Upper House* (Dunedin: University of Otago Press, 1972), p.235, for statistics on Councillors' and Members' ages.

Council during the mid-1890s.² Councillors' resistance to feminist demands also weakened under the realisation that public opinion had swung firmly behind the feminists on some questions, notably the repeal of the Contagious Diseases Act. Increased public acceptance of women's fundamental equality with men helped change political attitudes, but rising hereditarian-based concerns over the impact of venereal disease upon national strength and vigour also undermined traditional acceptance of men's right to sow their wild oats.

Religious discourses played important roles in the transformation of New Zealand's sex laws. Their influence was principally felt in conjunction with social purity and feminist discourses which emphasised the need for sexual self control. Religious organisations played a particularly important role in encouraging legislative rejection of the sexual double standard. They demanded a high standard of chastity for men and women and campaigned alongside the feminists for repeal of the Contagious Diseases Act, for a higher age of consent for girls and, in the case of the Protestant churches, for the introduction of equal grounds of divorce for men and women. However, religious principles also acted as a brake on reform of colonial sex laws. Religious-based opposition to divorce on grounds other than adultery and to changes to the prohibited degrees of marriage impeded liberalisation of marital law.

Religious discourse conflicted at times with secular ideologies promoted by New Zealand's freethinkers and rationalists. Secularists argued that reason rather than religion or 'superstition' should provide the basis for colonial sex legislation. Together with Non-conformist politicians they campaigned for a clearer separation between church and state. Secularists and Non-conformists largely drove the campaigns to liberalise divorce and affinal marriage laws. Although secularist discourse converged with religious and feminist

² *NZPD*, 95, 1896, p.iii; *NZPD*, 151, 1910, p.iii.

discourses on the question of equal divorce for men and women, it conflicted with Anglican, Presbyterian and Catholic views on other aspects of marriage. Debate over reform of the laws on marriage revealed deep divisions between secularists and some of their more religiously-minded colleagues.

The rise of medical/scientific discourse promoted the secularisation of New Zealand's sex legislation. Although the emergence of new medical explanations for social and moral disorder generally complemented the traditional religious and moral precepts which underpinned sex laws, medical/scientific discourses helped displace religious discourse on some issues. Hereditarian and eugenic theories undermined traditional views on the sanctity of marriage and encouraged acceptance of insanity as grounds for divorce. They similarly encouraged a reassessment of the punishment or treatment meted out to 'degenerates' and 'perverts'. However, medical/scientific and religious/purity ideologies converged in debates on censorship legislation, 'feeble-minded' female sexual delinquents and male sexual 'perverts'.

For many, eugenics provided a bridge between the discourses. Feminists and purity reformers argued that sexual self-control was one of the distinguishing features of civilised societies: 'Wise self-restraint and human advancement are shown to go hand in hand' declared the *White Ribbon* in 1896.³ Such beliefs encouraged labelling of the sexually promiscuous as 'degenerates' and provided a strong link for eugenic ideology with its division of society into the 'fit' and 'unfit'. Feminist and purity discourses also influenced medical professionals' views on sex legislation. Frederic Truby King, eugenicist and influential political lobbyist, strongly supported purity-based concerns about the evils of

³ *White Ribbon* 1:9 (March 1896), p.3.

indecent literature. King agreed with feminists and social purity reformers on the need for sexual restraint: medical 'authorities might be quoted without limit', he declared in 1890, 'to show how universal is the opinion that the function of control should be sedulously cultivated in youth, and that in the power to curb or bridle, and not in the power to let loose, lies the true strength of man'.⁴

Adherents of the ideologies discussed above all sought to use the state to promote or defend their own vision of appropriate sex legislation. Supporters of the reform discourses (feminist, religious/social purity and secularist) vigorously lobbied the state to incorporate new moral and philosophical perspectives within the legislation. The resistance to these discourses came from the two main 'status-quo' discourses which underpinned existing sex legislation - patriarchal and religious/conservative discourses - and, at times, from medical/scientific and social order discourses. By the 1880s reformers and their opponents alike accepted the state's right to intervene in the sexual lives of citizens on the grounds of 'public health' or 'the public good'. However, attempts to re-shape sex legislation invariably provoked debate over the extent to which the state could justifiably breach traditional 'liberties of the person' or invade the 'sanctity of the home'.

Between the 1880s and the 1910s feminist reformers vigorously opposed the 1869 Contagious Diseases Act on the grounds that it was a state-sanctioned violation of women's personal liberty and bodily integrity. Their support for equal divorce was similarly based on liberal philosophy which upheld women's rights to be treated as autonomous individuals. However, a parallel desire to impose constraints upon other sections of society accompanied

⁴ Dr F. Truby King, 'A Plea for Stringent Legislation in the Matter of Corrupt and Immoral Publications' (contin.), *NZMJ*, Vol.IV (January 1891), pp.156-58.

feminists' quest to enhance women's autonomy. Feminist support for a higher age of consent for girls and boys, for a youth curfew, for restrictions upon the sale of indecent material and for the incarceration of mental and moral degenerates revealed significant support for major breaches of traditional individual liberties. In New Zealand, liberal equal-rights feminism was heavily imbued with a social purity ethic.⁵ The feminists' defence of individual liberties was curtailed by their desire to coerce other members of society to abide by their own moral standards. Their acceptance of eugenic and hereditarian ideologies during the early 1900s reinforced existing coercive tendencies within the movement. Feminists' demands that the state defend women and girls from sexual harassment rested upon parallel demands that it control the behaviour of other members of society: men, women and girls who failed to abide by a restrictive sexual code.

Contradictory tendencies and sub-discourses can also be found within religious discourse. Differences within and between churches weakened the position of those who wished the law to reflect religious rather than secular principles. Political desire to avoid sectarian tensions significantly strengthened secular discourse and the subsequent secularisation of sex legislation. While many politicians accepted the validity of religious precepts embedded in sex laws, their reluctance to allow any one church to impose its views upon the wider community encouraged an acceptance of secular amendments to the legislation.

⁵ Raewyn Dalziel, 'The Colonial Helpmeet: Women's Role and the Vote in Nineteenth-Century New Zealand', *NZJH* 11:2 (October 1977), pp.120-21; Nicholls, p.27; Dorothy Page, 'Introduction' in Claudia Orange (gen. ed.), *The Suffragists: Women who Worked for the Vote. Essays from the Dictionary of New Zealand Biography* (Wellington: Bridget Williams Books, 1993), pp.1-2.

The rise of the medical profession and the subsequent medicalisation of morality posed challenging new questions about the balance between the state regulation of sexuality and individual liberties. The late nineteenth-century controversy over the Contagious Diseases Act exposed considerable public opposition to medical justifications for breaches of personal liberty. However, the rise of hereditarian and eugenic ideologies during the early 1900s encouraged some sections of society to support significant new levels of state control over individuals' sexual lives. Suggestions that mental defectives and habitual 'moral degenerates', male and female, be segregated from the rest of the community, or that they be sterilised or 'desexualised', revealed a significant shift in feminist and social purity reformers' attitudes to medically-based state regulation of sexuality.

The history of state regulation of sexuality in New Zealand is largely an account of the rise of nationalist, feminist, social purity, secularist and medical/scientific discourses and the ways in which these discourses conflicted, co-operated and converged on different issues.

Some historians have argued that the late nineteenth-century feminist movement was 'co-opted' by the social purity movement or that it was later seduced by the eugenics movement.⁶ However, co-opting or appropriating aspects of different discourses was by no means a one-way process. Feminist and social purity discourse significantly moderated medical and patriarchal political discourse on sexual questions. Initiatives to control venereal disease are the most obvious case in point. Medical/scientific discourse similarly had a

⁶ David Pivar, *Purity Crusade: Sexual Morality and Social Control 1868-1900* (Westport: Greenwood Press, 1973), pp.62-66; James Messerschmidt, 'Feminism, Criminology, and the Rise of the Female Sex "Delinquent", 1880-1930', *Contemporary Crises* 11:3 (1987), p.245; Frank Mort, *Dangerous Sexualities: Medico-Moral Politics in England Since 1830* (London: Routledge and Kegan Paul, 1987), pp.117-19; Lucy Bland, *Banishing the Beast: English Feminism and Sexual Morality 1885-1914* (London: Penguin, 1995), pp.222-249, 308.

moderating effect upon feminist purity discourse. The feminist male offender/female victim scenario broadened under the influence of hereditarian and eugenic ideologies to encompass the female 'moral degenerate'.

Sex legislation reformers and their opponents were positioned at different points along a spectrum combining medical and moral imperatives. They moved along this spectrum depending upon the particular issue of concern and the timing of that concern. The feminists provide the most obvious example of a shift along this spectrum. During the 1880s and 1890s they fiercely resisted medical justifications for detaining and examining prostitutes. However, during the 1910s and 1920s they shifted along the spectrum and used medical discourse to argue in favour of detention and segregation of female 'moral degenerates'. Medical justifications for targeting prostitutes during the late 1800s had threatened feminists' purity ethic by attempting to 'make vice safe'. But during the 1910s and 1920s medical discourse supported this ethic by rationalising the long-term detention of 'incurable' sexual 'degenerates'. Medical/scientific discourses were readily co-opted by feminist and purity reformers when they supported their efforts to enforce God's law. Politicians and doctors similarly drew upon moral and medical discourses at different times to support their positions on particular issues. Doctors used purity discourse during the 1890s to attack quacks during their campaign to tighten the censorship laws but simultaneously promoted medical over moral solutions during debates over prostitution and venereal disease. Subsequently the doctors acknowledged the deficiencies of their earlier approach and moved closer to the feminist position, arguing that venereal disease initiatives should target men as well as women.

Participants in sex debates were similarly positioned on a spectrum concerning state intervention and individual liberty. They moved along this spectrum depending on the topic discussed. Feminist and purity reformers defended prostitutes' rights to personal liberty during the late 1800s but simultaneously sought to introduce new restrictions on the sexual activities of young women through age of consent and curfew legislation. Politicians also positioned themselves at different points along the spectrum as they attempted to balance the rights of the individual with the welfare of society as a whole. While reluctant to breach individuals' rights to privacy by introducing compulsory notification of venereal disease, the politicians readily accepted the introduction of new censorship laws which significantly undermined the concept of private lives. Powerful lobbyists, notably doctors and feminist and purity reformers, reinforced the position of politicians who objected to the breach of privacy involved in compulsory notification. However, a general lack of support for the free circulation of indecent material facilitated this latter breach of individuals' rights and the sanctity of the home. Individual liberties were far more likely to be breached when all discourses converged in a general consensus that the danger posed justified increased state intervention in individuals' private lives.

Ultimately, state regulation of sexuality in New Zealand between 1880 and 1925 intensified under the influence of new moral and medical discourses and changing social conditions. The rise of secularism, equal-rights feminism and medical discourse played a major role in encouraging increased intervention and shaping new initiatives. New technologies, the rise of the health and education professions, and the growth of new audiences and a consumer ethic also played a part in shaping new concerns and encouraging increased state intervention to appease those anxieties. Conflicting and converging

discourses which operated within a climate of major social, ideological and technological change transformed the state regulation of sexuality in New Zealand during the late nineteenth and early twentieth centuries.

APPENDICES

1. Appendix I Chronology of Legislation
2. Appendix II Legislative Council Vote Correlations:
Contagious Diseases Act Repeal/Suffrage/Age of Consent
3. Appendix III House of Representatives Vote Correlations:
Suffrage/Age of Consent

APPENDIX I

New Zealand Legislative Chronology 1880-1925

- 1871** *Deceased Wife's Sister Marriage Bill*
 - seeking removal of prohibition against a widower marrying his sister-in-law
 - reintroduced 1872, 1874, 1875, 1877, 1878,
- 1880** **Deceased Wife's Sister Marriage Act**

Deceased Husband's Brother Marriage Bill
 - reintroduced 1890, 1893, 1896, 1898, 1900
- 1881** *Contagious Diseases Act Repeal Bill*
 - seeking abolition of legislation allowing detention and forcible medical examination of prostitutes
 - reintroduced 1887, 1888, 1889, 1895, 1896, 1897, 1898, 1901, 1903
- 1884** **Police Offences Act**
 - punishments for prostitutes loitering 'with intent', importuning in a public place (slight enlargement of existing controls)

Married Women's Property Act
 - allows married women to retain ownership of property held at the time of marriage or inherited, earned or received as a gift during the marriage
- 1885** *Divorce Reform Bill*
 - seeking limited extension of the grounds for divorce
 - other, more radical extension Bills introduced in 1887, 1888, 1889, 1891, 1894, 1895, 1896, 1898
- 1888** *Offences Against the Person Bill*
 - Proposal to increase the punishment meted out for indecent assault upon a male
 - attempt to raise age of consent for girls from 12 to 16 years
- 1889** **Offences Against the Person Act**
 - raises age of consent for girls to 14
- 1891** **Police Offences Act**
 - new restrictions on brothel-keeping

Indecent Advertisements Bill
 - based upon English 1889 Indecent Advertisements Act

1892 Offensive Publications Act

- first New Zealand Act to deal exclusively with indecent, obscene and immoral publications. Extends definition of an indecent advertisement.

1893 Criminal Code Act

- stiffens penalties for pornographic offences and brothel keeping
- introduces the cat-o'-nine-tails as punishment for 'unnatural' offences and decrees that it shall be no defence to a charge of indecent assault on a male that the man or boy concerned consented to the act of indecency
- new penalties for brothel-keepers

Post Office Acts Amendment Act

- Postmasters gain right to detain and destroy any posted packages believed to contain any publication of an indecent, immoral or obscene nature or which was likely to have an indecent, immoral, prurient or obscene effect

1894 Offences Against the Person Amendment Act

- age of consent raised to 15 years

Offensive Publications Act Amendment Act

- raises penalty for individuals convicted of 'gross offences'

Legitimation Act

- bastards to be legitimised if parents marry after birth

1896 Married Persons Summary Separation Act

- no order to be made if applicant guilty of adultery

Offences Against the Person Act

- age of consent raised to 16 years

Juvenile Depravity Suppression Bill

- seeking increased control over youth on streets

1898 Divorce Reform Act

- women able to divorce husbands on the grounds of adultery alone
- extension of grounds for divorce to include desertion, non-compliance with a decree for restitution of conjugal rights, habitual drunkenness and conviction for attempted murder of spouse.

Indictable Offences Summary Jurisdiction Bill

- seeking extension of time for laying charges of indecent assault

Young Persons' Protection Bill

- repeat of 1896 Juvenile Depravity Suppression Bill.
- reintroduced 1900, 1901, 1902

- 1900** **Deceased Husband's Brother Marriage Act**
- Criminal Code Amendment Act**
- criminalisation of incest
- Police Offences Amendment Act**
- tightens legislation regarding pimps and procurers
- 1900 Post Office Amendment Act**
- makes it an offence to send indecent publications and articles through the post
- Police Offences Bill*
- seeking increased penalties for pimps and procurers
- reintroduced 1901
- Divorce Bill*
- to extend grounds of divorce to include insanity and to reduce time periods for divorce on the grounds of desertion, drunkenness and imprisonment
- similar Bills reintroduced 1901, 1903, 1904, 1905, 1906, 1907
- 1901** *Sale of Preventives Prohibition Bill*
- to prohibit the sale of birth control devices and medicines
- Police Offences Amendment Act**
- pimps and procurers classed as idle and disorderly persons liable for punishment
- 1902** *Legitimation Bill*
- 1903** **Legitimation Act Amendment Act**
- legitimising children born to married couples whose unions had been deemed invalid until the passage of the Deceased Wife's Sister and Deceased Husband's Brother Marriage Acts.
- Marriage Restrictions Removal Bill*
- seeking removal of the prohibition on marriage with a deceased wife's niece or deceased husband's nephew
- reintroduced 1904, 1905 and annually 1906-1912
- 1904** **Divorce and Matrimonial Causes Acts Compilation Act**
- 1905** **Marriages Validation Act**
- marriages contracted with deceased wife's niece or deceased husband's nephew prior to 1905 now deemed valid. However, future marriages of this type remain invalid.

Criminal Code Amendment Act

- gives judges power to clear courts in the interests of public morality and to forbid the report of proceedings

Offensive Publications Act

- tightens provisions of 1892 Act

Criminal Code Amendment Bill

- seeking extension of time for laying charges in cases of carnal knowledge of girls

1906*Marriages Validation Act Extension Bill*

- seeking to validate future marriages with deceased wife's niece or deceased husband's nephew
- reintroduced 1907, 1908, 1909, 1910

Quackery and Other Frauds Prevention Bill

- to prevent sale and advertising or fraudulent and 'immoral' medicaments
- reintroduced 1907, 1908

Post Office Amendment Act

- gives Postmaster-General power to refuse to forward mail to anyone believed to be engaged in immoral businesses

Offensive Publications Act

- regarding search warrants for obscene material

1907**Divorce and Matrimonial Causes Act Amendment Act**

- grounds for divorce extended to include insanity and murder of spouse's child by husband or wife
- removal of clause in 1898 Act allowing divorce on grounds of non-compliance with an order for restitution of conjugal rights

1908**Quackery Prevention Act**

- introduces tighter controls on the sale and advertising of medicines and health appliances

Police Offences Act

- new restrictions on brothel-keeping

1910**Indecent Publications Act**

- extends and clarifies existing legislation, increases some punishments. Significantly tightens law relating to publications which explicitly dealt with preventives and abortifacients

Contagious Diseases Act Repeal Act

- 1911 Mental Defectives Act**
 - extends definition of the mentally defective to include 'idiots', 'imbeciles' and the 'feeble-minded'
- 1916 Cinematograph-Film Censorship Act**
 - provides for appointment of film censors with the power to ban screenings of undesirable films
- War Regulations Act**
 - places 'one-woman brothels' on the same footing as those containing two or more women
- 1917 Social Hygiene Act**
 - introduces new provisions to combat venereal disease including women staffed 'Health Patrols' to regulate the public behaviour of girls
- 1920 Divorce and Matrimonial Causes Act**
 - extends grounds for divorce to include conviction for wounding the petitioner or child of the petitioner
 - restores failure to comply with a decree for restitution of conjugal rights as grounds for divorce
 - allows discretionary divorce after three years under a judicial separation or court order provided one party innocent of a matrimonial offence
- Marriage Amendment Act**
 - makes it a criminal offence to impute that a marriage considered valid in civil law was invalid or that the children of the marriage were illegitimate
- 1922 Divorce and Matrimonial Causes Act**
 - gives the respondent the right to counter the divorce action if it could be proved that the separation on which the divorce was based had resulted from the wrongful conduct of the petitioner
- 1926 Cinematographic Film Censorship Amendment Act**
 - widens scope of 1916 Act to include cinema advertising. Gives more detailed instructions to censor
- 1928 Cinematograph Film Censorship Act**
 - incorporates and replaces existing film censorship legislation

APPENDIX II

Legislative Council Voting Correlations 1890s:

Contagious Diseases Act Repeal, Age of Consent and Women's Suffrage

Tables A-C include all Councillors who voted on the second readings of the 1895 and 1896 CD Act Repeal Bills. Dr Daniel Pollen did not cast a vote but is included in Table 2 because he stated his position very clearly during debate on the 1895 Bill. See *NZPD*, 88, 1895, p.277 and *NZPD*, 92, 1896, p.325 for the Councillors' votes. See *NZPD*, 82, 1893, pp.80-81 for Councillors' votes on the Electoral Bill which granted women the franchise. See *NZPD*, 86, 1894, p.758 for Councillors' votes on raising the age of consent (AC) to sixteen. Councillors' occupational and educational classifications have been drawn from W.K. Jackson, *The New Zealand Legislative Council* (Dunedin: University of Otago Press, 1972), pp.217-225.

KEY

Education P Primary
(Edn) S Secondary
 U University/Tertiary

<i>Occupation</i>	L Law	<i>Reln:</i>	Religion
(Occn)	P Professional	<i>AC:</i>	Age of Consent
	C Commerce	<i>YPP:</i>	Young Persons' Protection Bills
	T Trade	<i>Suffr:</i>	Women's Suffrage
	J Journalism		
	F Farming		
	W Workmen & Trade Union officials		

Italics: Councillors who spoke to the Bills

* Liberal appointees
Changed their votes in 1896¹
✓ In favour of raising the age of consent to 16/In favour of enacting the YPP Bills
x Opposed to raising the age of consent to 16/Opposed to enacting the YPP Bills
Y Supported women's suffrage
N Opposed women's suffrage
- Position not known
~ Changed mind between 1897 and 1902

¹ Henry Scotland voted in favour of repeal in 1895 but changed his vote without explanation the following year. W.C. Walker fundamentally opposed repeal but was obliged to introduce the 1896 repeal Bill into the Council on behalf of the government.

Table A. Legislative Council Advocates of Repeal of the CD Act 1890s

Name	District	Occn	Edn	Reln	AC	YPP	Suffr.
Acland, J.B.A.	Canterbury	F	U	C of E	✓	-	Y
Barnicoat, J.W.	Nelson	F	S	C of E	x	~	Y
*Bolt, W.M.	Dunedin	W	P	Freeth	✓	✓	Y
<i>Buckley, P.A.</i>	Wellington	L	U	RC	x	-	Y
*Jenkinson, JE	Chch	W	-	-	✓	✓	Y
* <i>Jennings, W.T.</i>	Auckland	W	P	-	x	x	Y
*Jones, G.	Oamaru	J	S	-	-	✓	-
* <i>Kerr, J.</i>	James	J	-	-	✓	x	N
Montgomery, W.	Chch	T	S	-	x	✓	Y
<i>Pharazyn, R.</i>	Waitotara	F	S	Freeth	x	-	Y
<i>Stewart, W.D.</i>	Dunedin	L	U	Presby	✓	✓	Y
Wahawaha, R.	Waiomatatini	F	-	C of E	-	-	N
Williams, H.	Pakaraka	F	P	-	-	~	Y

Table B. Legislative Council Opponents of Repeal of the CD Act 1890s

Name	District	Occn	Edn	Reln	AC	YPP	Suffr
*Arkwright, F.	Marton	F	S	-	-	✓	-
Baillie, W.D.H.	Marlb'h	F	S	-	-	~	N
<i>Bowen, C.C.</i>	Chch	P	U	C of E	✓	✓	N
Bonar, J.A.	Westland	C	-	Presby.	x	x	N
*Feldwick, H.	Icargill	J	S	-	x	x	N
Grace, M.S.	Wgtn	P	U	RC	-	x	N
Holmes, M.	Hokitika	F	-	-	-	✓	N
Johnston, C.J.	Wgtn	F	-	-	-	x	Y
* <i>Kelly, T.</i>	New Plym.	F	P	-	x	~	N ²
Kenny, C.W.A.T.	Marlb'h	F	S	-	-	x	Y
*MacGregor, J.	Dunedin	L	U	Rnst ³	✓	-	Y
<i>McLean, G.</i>	Otago	C	U	-	x	x	N
Ormond, J.D.	Napier	F	-	-	x	x	Y
Peacock, J.T.	Canterbury	C	S	-	x	✓	N
<i>Pollen, D.</i>	Auckland	P	U	-	-	-	Y
Reynolds, W.H.	Otago	C	S	Presby.	✓	✓	Y ⁴
*Richardson, E.	Chch	P	U	-	x	x	N
*Rigg, J.	Wgtn	W	S	RC/Qr ⁵	x	✓	N
#Scotland, H.	Taranaki	L	U	-	-	✓	N ⁶
<i>Shrimski, S.E.</i>	Oamaru	T	-	-	x	x	N
Stevens, E.C.J.	Chch	C	-	-	-	~	Y ⁷

² Kelly had intended to vote in favour of women's suffrage but Seddon persuaded him to oppose it. See Patricia Grimshaw, *Women's Suffrage in New Zealand* (Auckland: Auckland University Press, 1987), p.92.

³ Macgregor was a rationalist.

⁴ Reynolds would have opposed women's suffrage but for Seddon's machinations: Grimshaw, p.92.

⁵ John Rigg (1858-1943) was a Catholic turned Quaker: *DNZB*, vol.II, pp.423-44.

⁶ Scotland did not vote in this division but he opposed women's suffrage.

⁷ Seddon's actions prompted Stevens, like Reynolds, to support the Bill: Grimshaw, p.92.

Swanson, W.	Auckland	F	-	-	x	✓	N
Taiaroa, H.K.	Dunedin	F	-	-	✓	~	-
Walker, L.	Chch	F	S	-	x	~	N
*# <i>Walker, W.C.</i>	Chch	F	U	-	-	✓	N
<i>Whitmore, G.S.</i>	Hawkes Bay	F	S	-	x	✓	N
Whyte, J.B.	Auckland	F	S	-	x	-	Y

Table C. Legislative Council - 1890s CD Repeal Vote Analysis

	Total	Repeal advocates	Repeal Opponents
Total nos. voting	40	13	27
Liberal appointees	12	5	7
OCCUPATION			
Farming	18	5	13
Law	4	2	2
Professional	4	-	4
Commerce	5	-	5
Trade	2	1	1
Journalism	3	2	1
Working men, trade union officials	4	3	1
EDUCATION			
Primary	4	3	1
Secondary	14	4	10
Uni. or equivalent	11	3	8
<i>Unknown</i>	<i>11</i>	3	8
RELIGION			
Anglican	4	3	1
Catholic	2	1	1
Non-conformist	3	1	2
Freethought	2	2	-
<i>Unknown</i>	29	6	23
SUFFRAGE SUPPORT			
Yes	18	10	8 (6)
No	19	2	17 (16)
<i>Unknown</i>	3	1	2

APPENDIX III

House of Representatives: Suffrage, Age of Consent Votes

* Suffrage position taken from the second reading vote of the 1893 Women's Suffrage Bill (*NZPD*, 80, 1893, p.549)

@ Suffrage position taken from opinions expressed during debates, voting in 1891 (*NZPD*, 71, 1891, p.55) and references in Patricia Grimshaw, *Women's Suffrage in New Zealand* (Auckland: Auckland University Press, 1987), *passim*.

The 1896 statistics come from a vote taken in Committee regarding raising the age of consent to eighteen: *NZPD*, 92, 1896, p.660.

Table D.

Pro Suffrage	Party	1896: Pro-18	1896: Vs-18
* Allen, J.	Con.		✓
* Buchanan, W.C.	Con.		✓
* Buick, T.L.	Li.		✓
* Earnshaw, W.	Li.	✓	
* Hall-Jones, W.	Li.		✓
* Hogg, A.W.	Li.		✓
* Hutchison, W.	Li.	✓	
* Joyce, J.	Li.	✓	
* Mitchelson, E.	Con.		✓
* Newman, A.K.	Con.	✓	
* Pinkerton, D.	Li.		✓
* Russell, W.R.	Con.		✓
* Stout, R.	Li.	✓	
* Tanner, W.W.	Li.	✓	
* Meredith	Li.		✓
@ Cadman, A.J.	Li.		✓
@ Duncan, T.	Li.		✓
@ Duthie, J.	Con.		✓

@ Hutchison, G.	Con.	✓	
@ Kelly, J.	Li.	✓	
@ Kelly, W.	Li.		✓
@ Lawry, F.	Li.		✓
@ McGuire, F.	I.	✓	
@ Mills, C.H.	Li.		✓
Total: 25	7/C 16/L 1/I	9	15

Table E.

Vs Suffrage	Party	1896: Pro-18	1896: Vs-18
@ Carncross, W.C.F.	Li.		✓
@ Fraser, W.	Con.		✓
@ Parata, T.	Li.	✓	
@ Seddon, R.J.	Li.		✓
@ Thompson, R.	Con.		✓
Total: 5	3/L 2/C	1	4

BIBLIOGRAPHY

I. PRIMARY SOURCES

- a) Unpublished government records
- b) Records of boards and associations
- c) Published official records
- d) Reference works
- e) Contemporary books, pamphlets

II. SECONDARY SOURCES

1. New Zealand

- a) Books
- b) Articles
- c) Unpublished theses, research essays

2. International

- a) Books
- b) Articles
- c) Theses

I. PRIMARY SOURCES

a) Unpublished government records

Child Welfare Files

CW1

40/5 1045 Feeble-minded children 1909-25

40/12/8 Special Schools - health - self-abuse & circumcision 1906-44

Crown Law Office Files

1 26 Opinion from the Solicitor General on the legality of sending material
on birth control by post

Customs Department Files

C1

24/43/- Indecent and obscene publications 1917-30

24/43/18 Prohibited literature 1922-38

24/43/23 Rulings on doubtful publications 1922-27

24/43/23	Doubtful literature relating to sex, marriage and birth control 1922-31, Box 66
24/43/24	Seizure and confiscation of indecent publications 1910-37
C 6 4	Circulars and New Rulings 1880
C 6 35	Circulars and New Rulings 1925
C 20 3	Register of Seizures 1895-1904

Health Department Files

H1

45/1 8987	Venereal disease - pamphlets, preparation of, 1916-29
45/3 8989	Venereal diseases - Social Hygiene Association, Christchurch, 1916-27
45/4	Venereal disease - treatment 1919-38
45/4/28 9006	Venereal disease among Maoris
54/79 11305	Replies from the medical profession to the questions asked by the Commission of Enquiry into Mental Defectives and Sexual Offenders
54/79 B.23	Proposed treatment of mental degenerates, feeble-minded and epileptics 1925
54/79/1 28044	Proposed treatment of mental degenerates, etc. - procedure of Committee of Enquiry 1924/5
54/79/2 28045	Treatment of mental degenerates 1924-34
130 9145	Social Hygiene Act 1918-1931
130/6 B.84	Social Hygiene Act - propaganda. Reports by Mrs McHugh 1922-26
175/50 17185	Quackery Prevention Act - sales of abortifacients 1922-30

H3: Commissions of Inquiry and Committees

3/13 W1628	Committee of Enquiry into Mental Defectives and Sex Offenders 1924
------------	--------------------------------------------------------------------

Health - Mental Health Division Files

H-MHD1

1011 8/695	Eugenics and insanity - 1922
1011 8/782	Recommendation from Wanganui Hospital Board as to preventing reproduction in the case of ex-mental patients
1011 8/854	Colonies for mental defectives

Internal Affairs Files

19/5	Pamphlets of contagious diseases
60 6/1	Register of Film: viewed by Film Censors Office 1916-17

Justice Department Files

J1

18/10/6	Crimes Act - Crimes Bill - representations for amendment 1905-22
---------	------------------------------------------------------------------

J-PD40
 1917/15/48 B.200 Statement re: Social Hygiene Bill introduced by the Minister of Health
 1917

Police

P1
 1895/845 Report on the working of the 'Infant Life Protection Act 1893'
 1909/1009 Amy Maud Bock - false declaration 1903-63
 1915/1032 One-woman brothels in Hobson St, Auckland, 1910-15

 1920/242 Hayne, Neylon & Inglis - procuring abortion and death of M.
 Donnelly
 1920/643 E.H. Wilmot - indecent exposure, 1920

Evidence Taken by the Young Persons Protection Bill Committee, Confidential to Members
 of the NZ House of Representatives, Session II, 1897 (ATL)

b) Records of boards and associations

International Council of Women (ATL)

Folder 1	MS-Papers-3969
Folder 2	" " "
Folder 3	" " "

National Council of Women of New Zealand Inc.

(Christchurch Branch Records)

Register of Resolutions, 1896-1994

(ATL)

Constitution and Conference Minutes 1896	MS-Papers-1371-106
President's Address (Mrs K. Sheppard) 1919	MS-Papers-1371-107
Report of the Proceedings of the Ninth Conference, Gisborne, 1929	MS-Papers-1371-108
Minutes of Annual Meetings and Conferences	MS-Papers-1371-126
Dominion Secretary's Reports 1924-33	MS-Papers-1371-128

*New Zealand Society for the Protection of Women and Children (and Prevention of Cruelty
to Animals), Auckland (AMIL)*

Annual Reports 1893-1916	MS 1144
Minute Book 1893-1898	MS 1144
Newspaper Cuttings 1893-	MS 1144

NZ Society for the Protection of Women and Children, Wellington (ATL)

Minute Book 1897-1901	MS-Group-180
-----------------------	--------------

Minute Book	1901-1904	MS-Group-180
" "	1904-1908	qMS-NEW
" "	1908-1912	" "
" "	1912-1916	" "
Annual Reports	1897-1919	MSx 3292 Acc.91-163
" "	1919/20-1930/31	MSx 3293 Acc.91-163

NZ Women's Christian Temperance Union (ATL)

Convention Minutes - National	1886	79-057-09/12
Minute Book - Auckland	1889-1898	79-057-08/03
Convention Minutes - National	1889-92, 1894	79-057-09/13
" "	1895-1905	79-057-09/09
" "	1906-1912	79-057-09/10
" "	1913-1918	79-057-09/11
" "	1919-1922	79-057-09/14
" "	1923-1928	79-057-09/15

White Ribbon : 1895-1900, 1912-18, 1924

Journal of the British Medical Association (NZ Branch) 1900-1912, Volumes 1-11

New Zealand Medical Journal 1887-1896, volumes 1-9

c) Published official records

Appendices to the Journals of the House of Representatives, 1880-1925

Bills Thrown Out, 1880-1925

Journal of the House of Representatives, 1880-1925

Journal of the Legislative Council, 1880-1925

New Zealand Gazette, 1916

New Zealand Parliamentary Debates, 1880-1925

New Zealand Statutes, 1880-1925

New Zealand Yearbook, 1889-1925

Statistics of New Zealand for the Crown Colony Period, 1840-1852 (Auckland University, 1954)

d) Reference works

The Cyclopaedia of New Zealand: Industrial, Descriptive, Historical, Biographical, Vols. 1-6 (Wellington & Christchurch: 1897, 1902, 1903, 1905, 1906, 1908)

Hinde, G.W. (ed.), *Mozley and Whiteley's Law Dictionary*, NZ edition (Wellington: Butterworths, 1964)

McLintock, A.H. (ed.), *Encyclopedia of New Zealand*, Vols I-III (Wellington: Government Printer, 1966)

Oliver, W.H., (gen. ed.), *The Dictionary of New Zealand Biography: Vol. I 1769-1869* (Wellington: Allen & Unwin/Department of Internal Affairs, 1990)

Orange, C., (gen. ed.), *The Dictionary of New Zealand Biography: Vol. II 1870-1900* (Wellington: Bridget Williams Books/Department of Internal Affairs, 1993)

_____. *The Dictionary of New Zealand Biography: Vol. III 1901-1920* (Wellington: Auckland University Press/Department of Internal Affairs, 1996)

_____. *The Suffragists: Women who Worked for the Vote. Essays from the Dictionary of New Zealand Biography* (Wellington: Bridget Williams Books, 1993)

Scholefield, G.H. (ed.), *Dictionary of New Zealand Biography*, Vols I & II (Wellington: Department of Internal Affairs, 1940)

Scholefield, G.H., & E. Schwabe (eds.), *Who's Who in New Zealand* (Wellington: Gotch & Gotch Proprietary, 1908)

Wilson, J.O., *New Zealand Parliamentary Record, 1840-1984* (Wellington: Government Printer, 1985)

e) Contemporary books, pamphlets, articles

Anon. *The Great Vice and How to Deal With It: A Talk to Men* (Christchurch: Christian Evidence & Social Purity Book Depot, 1893)

Ashcroft, James, *Public Morals: Short Essays on Social Subjects and Some Verses* (Wellington: 1900)

Australasian Medical Congress, *Report of Special Committee on Syphilis* (Auckland: 1914)

Batchelor, F.C., *Addresses to the Society for the Promotion of the Health of Women and Children* (Dunedin: 1909)

Beale, Octavius C., *Racial Decay: A Compilation of Evidence From World Sources* (Sydney: 1910)

Berry, Rev. Joseph, *Private Lecture to Young Men Upon an Avoided but Important Subject* (Wellington: 1888)

Bishop, H.W., *Degeneracy* (Christchurch: 1911)

British Committee for the Abolition of Vice, *Appeal to the Members of the New Zealand Legislature* (London: 1895)

Chapple, W.A., *The Fertility of the Unfit* (Melbourne: Whitcomb and Tombs Ltd., 1903)

Cleary, H.W., *Catholic Marriages* (Dunedin: 1908)

____ *Catholics and the Marriage Laws* (Wellington: 1920)

____ *The Marriage Law Amendment Bill* (Auckland: 1920)

Dickson, Rev. John, *History of the Presbyterian Church of New Zealand* (Dunedin: J. Wilkie & Co./NZ Bible, Tract and Book Society, 1899)

Frankland, F.W., *Reverence for, and Loyalty to, Womanhood: The True Basis of Sex Morality* (Wellington: 1909)

Hawkes, R.J.J., *What is Eugenics? A Plea for Racial Improvement* (Dunedin: 1911)

Hosking, Rev. John, *A Christchurch Quack Unmasked: The Life and Teaching of A. Bently Worthington and Mary H. Plunkett* (Christchurch: 1893)

Jackson, Dr. H.W., *The Social Evil: Its Nature, Causes, and Remedies* (Sydney: 1883)

Kayll, Rev. J.L.A., *A Plea for the Criminal* (Invercargill: 1905)

King, Dr F. Truby, 'A Plea for Stringent Legislation in the Matter of Corrupt and Immoral Publications', *NZMJ*, Vol.IV (October 1890) & contin., *NZMJ*, Vol.IV (January 1891)

Kirby, J.C., *Remedies for the Great Evil Which Injures Social Purity* (Adelaide: 1883)

Lomax-Smith, Montagu, *Woman in Relation to Physiology, Sex, Emotion, Intellect* (Christchurch: 1895)

Longdill, C.P.W., *The Law of Sexual Activity* (Gisborne: 1901)

Lush, W.E. (Rev.), *A Waybook for Girlhood: A Book for Mothers to Give to Their Daughters* (Auckland: The Brett Printing and Publishing Co. Ltd, 1903)

- *A Waybook for Youth: A Book for Fathers to Give to Their Sons*, second edition (Auckland: Whitcombe and Tombs Ltd., 1917)
- *The Parental Duty of Preserving Innocence by Purified Knowledge* (Auckland: Gilbert Bros. Printers, 1905)
- MacGregor, J., *Marriage and Divorce: The Ecclesiastical and the Rationalistic Conceptions of Marriage Contrasted* (Dunedin: 1897)
- Muskett, Dr. P.E., *The Illustrated Medical Guide*, NZ edition (Wellington: 1903)
- Neil, J.F. (Dr), *The New Zealand Family Herb Doctor* (Dunedin: 1889)
- Neill, J. Hardie, *Lecture to NZ Troops in the Field* (1918)
- Newton, A.E., *The Better Way: An Appeal to Men on Behalf of Human Culture Through a Wiser Parentage* (Christchurch: 1893)
- New Zealand Defence Department, *The Dangers of Venereal Disease: Advice to Soldiers of the NZ Expeditionary Force* (1916)
- Robson, R.W., *The Adventures of Amy Bock* (Dunedin: 1909)
- Rout, Ettie, *The Morality of Birth Control* (London: 1925)
- Stout, A.P., *Notification: Its Trials and Failure* (Wellington: 1922)
- Turton, Amy E., *The Rare Justice of Woman* (Christchurch: c.1896)
- Zola, Emile, *Nana*, translated by Douglas Parmée (Oxford/New York: Oxford University Press, 1992)

II. SECONDARY SOURCES

1. *New Zealand*

a) **Books**

- Beeby, C.E., *Books You Couldn't Buy* (Wellington: Price Milburn for the New Zealand Book Council, 1981)
- Belich, James, *Making Peoples: A History of the New Zealanders from Polynesian Settlement to the End of the Nineteenth Century* (Auckland: Allen Lane/The Penguin Press, 1996)

- Biggs, Bruce, *Maori Marriage: An Essay in Reconstruction* (Wellington: A.H. & A.W. Reed, 1970. First published 1960)
- Brookes, B., C. Macdonald, & M. Tennant (eds.), *Women in History: Essays on European Women in New Zealand*, Vol.I (Wellington: Allen & Unwin/Port Nicholson Press, 1986)
- *Women in History II: Essays on Women in New Zealand* (Wellington: Bridget Williams Books, 1992)
- Bryder, Linda (ed.), *A Healthy Country: Essays in the Social History of Medicine in New Zealand* (Wellington: Bridget Williams Books, 1991)
- Bunkle, P. & Hughes, B. (eds.), *Women in New Zealand Society* (Auckland: Allen & Unwin, 1980)
- Christoffel, Paul, *Censored: A Short History of Censorship in New Zealand* (Wellington: Department of Internal Affairs, 1989)
- Cooke, Robin, *Portrait of a Profession: The Centennial Book of the New Zealand Law Society* (Wellington: A.H. & A.W. Reed, 1969)
- Davidson, Allan K., *Christianity in Aotearoa: A History of Church and Society in New Zealand* (Wellington: Education for Ministry, 1991)
- Dalziel, Raewyn, *Focus on the Family: The Auckland Home and Family Society, 1893-1993* (Auckland: David Ling Publishing Ltd, 1993)
- Department of Justice, *Crime in New Zealand* (Wellington: Government Printer, 1968)
- Dow, Derek, *Safeguarding the Public Health: A History of the New Zealand Department of Health* (Wellington: Victoria University Press, 1995)
- Elder, J.R., *The History of the Presbyterian Church of New Zealand, 1840-1940* (Christchurch: Presbyterian Bookroom, 1940)
- Eldred-Grigg, Stevan, *Pleasures of the Flesh: Sex and Drugs in Colonial New Zealand, 1840-1915* (Wellington: A.H. & A.W. Reed, 1984)
- Else, Anne (ed.), *Women Together: A History of Women's Organisations in New Zealand* (Wellington: Daphne Brasell Associates Press/Historical Branch, Department of Internal Affairs, 1993)
- Fairburn, Miles, *The Ideal Society and its Enemies: The Foundations of Modern New Zealand Society, 1850-1900* (Auckland: Auckland University Press, 1989)

- Grimshaw, Patricia, *Women's Suffrage in New Zealand* 1st publ. 1972 (Auckland: Auckland University Press, 2nd ed., 1987)
- Hamer, David, *The New Zealand Liberals: The Years of Power, 1891-1912* (Auckland: Auckland University Press, 1988)
- Hill, Richard S., *The Colonial Frontier Tamed: New Zealand Policing in Transition, 1867-1886* (Wellington: Historical Branch, Department of Internal Affairs, 1989)
- *The Iron Hand in the Velvet Glove: The Modernisation of Policing in New Zealand, 1886-1917* (Wellington: Dunmore Press/New Zealand Police/Historical Branch, Department of Internal Affairs, 1995)
- *Policing the Colonial Frontier: The Theory and Practice of Coercive Social and Racial Control in New Zealand, 1767-1867* (Wellington: Historical Publications Branch, Department of Internal Affairs, 1986)
- Hood, Lynley, *Minnie Dean: Her Life and Crimes* (Auckland: Penguin Books, 1994)
- Houston, Stewart (ed.), *Marriage and the Family in New Zealand* (Wellington: Sweet and Maxwell Ltd, 1970)
- Jackson, H.R., *Churches and People in Australia and New Zealand 1860-1930* (Wellington: Allen & Unwin/Port Nicholson Press, 1987)
- Jackson, W.K., *The New Zealand Legislative Council: A Study of the Establishment, Failure and Abolition of an Upper House* (Dunedin: University of Otago Press, 1972)
- James, Bev & Kay Saville-Smith, *Gender, Culture and Power: Challenging New Zealand's Gendered Culture* (Auckland: Oxford University Press, 1994)
- Lovell-Smith, Margaret, *The Woman Question: Writings by the Women Who Won the Vote* (Auckland: New Women's Press, 1992)
- Macdonald, Charlotte, *The Vote, the Pill and the Demon Drink: A History of Feminist Writing in New Zealand, 1869-1993* (Wellington: Bridget Williams Books, 1993)
- *A Woman of Good Character: Single Women as Immigrant Settlers in Nineteenth Century New Zealand* (Wellington: Bridget Williams Books/Historical Branch, Department of Internal Affairs, 1990)
- Macdonald, C., M. Penfold, B. Williams (eds.), *The Book of New Zealand Women* (Wellington: Bridget Williams Books Ltd, 1991)
- Manson, Cecil and Celia, *Doctor Agnes Bennett* (London: Michael Joseph, 1960)

- Mein Smith, Philippa, *Maternity in Dispute: New Zealand, 1920-1939* (Wellington: Historical Branch, Internal Affairs, 1986)
- Milne, R.S., *Political Parties in New Zealand* (Oxford: Clarendon Press, 1966)
- Newbold, Greg, *Crime and Deviance* (Auckland: Oxford University Press, 1992)
- Nicholls, Roberta, *The Women's Parliament: The National Council of Women of New Zealand 1896-1920* (Wellington: Victoria University Press, 1996)
- Page, Dorothy, *The National Council of Women: A Centennial History* (Auckland: Auckland University Press/Bridget Williams Books with the National Council of Women, 1996)
- Phillips, Jock, *A Man's Country? The Image of the Pakeha Male: A History* (Auckland: Penguin, 2nd ed., 1996)
- Phillips, Roderick, *Divorce in New Zealand: A Social History* (Auckland: Oxford University Press, 1981)
- Pool, Ian, *The Maori Population of New Zealand 1769-1971* (Auckland: Auckland University Press/Oxford University Press, 1977)
- Porter, Frances & Macdonald, Charlotte (eds.), *'My Hand Will Write What My Heart Dictates': The Unsettled Lives of Women in Nineteenth-Century New Zealand As Revealed to Sisters, Family and Friends* (Auckland: Auckland University Press/Bridget Williams Books, 1996)
- Pratt, John, *Punishment in a Perfect Society: The New Zealand Penal System 1840-1939* (Wellington: Victoria University Press, 1992)
- Rankin, C., *Women and Parliament 1893-1993: 100 Years of Institutional Change* (Wellington: Office of the Clerk of the House of Representatives, 1993)
- Rice, Geoffrey (ed.), *The Oxford History of New Zealand* (Auckland: Oxford University Press, 1992)
- Ritchie, Jane & James Ritchie, *Violence in New Zealand* (Wellington: Huia Publishers/Daphne Brasell Associates Press, 1993)
- Simpson, F.A., *Parliament in New Zealand* (Wellington: A.H. & A.W. Reed, 1947)
- Sinclair, Keith, *A History of New Zealand* (Auckland: Penguin Books, 1985)
- Sutch, W.B., *Women with a Cause* (Wellington: New Zealand University Press, 1974)

Tennant, Margaret, *Children's Health, The Nation's Wealth: A History of Children's Health Camps* (Wellington: Bridget Williams Books/Historical Branch, Department of Internal Affairs, 1994)

——— *Paupers and Providers: Charitable Aid in New Zealand* (Wellington: Allen & Unwin/Internal Affairs, 1989)

Thompson, Barry & Robert Neilson, *Sharing the Challenge: A Social and Pictorial History of the Christchurch Police District* (Christchurch: J.C. Rowe & Christchurch Police District History Book Committee, 1989)

Tolerton, Jane, *Ettie: A Life Of Ettie Rout: 'Guardian Angel' or 'Wickedest Woman'?* (Auckland: Penguin Books, 1992)

Toynbee, Claire, *His Work and Hers: Family, Kin and Community in New Zealand, 1900-1930* (Wellington: Victoria University Press, 1995)

b) Articles, Essays

Belgrave, Michael, 'Medicine and the Rise of the Health Professions', in Linda Bryder (ed.), *A Healthy Country: Essays on the Social History of Medicine in New Zealand* (Wellington: Bridget Williams Books, 1991)

Bradbury, Bettina, 'From Civil Death to Separate Property: Changes in the Legal Rights of Married Women in Nineteenth Century New Zealand', *NZJH* 29:1 (April 1995)

Brookes, Barbara, 'A Weakness for Strong Subjects: The Women's Movement and Sexuality', *NZJH* 27:2 (October 1993)

Bunkle, Phillida, 'The Origins of the Women's Movement in New Zealand: The Women's Christian Temperance Union, 1885-1895', in P. Bunkle & B. Hughes (eds.) *Women in New Zealand Society* (Auckland: Allen & Unwin, 1980)

Curson, P.H., 'Household Structure in Nineteenth Century Auckland', *New Zealand Geographer* 32:2 (October 1976)

Dalley, Bronwyn, 'From Demi-Mondes to Slaveys: Aspects of the Management of the Te Oranga Reformatory for Delinquent Young Women, 1900-1918', in B. Brookes et al (eds.), *Women in History II: Essays on Women in New Zealand* (Wellington: Bridget Williams Books, 1992)

Dalziel, Raewyn, 'The Colonial Helpmeet: Women's Role and the Vote in Nineteenth-Century New Zealand', *NZJH* 11:2 (October 1977)

Fairburn, Miles, 'Vagrants, "Folk Devils" and Nineteenth Century New Zealand', *Historical Studies* 21:85 (October 1985)

- Fleming, Phillip J., 'Fighting the "Red Plague" 1910-45', *NZJH* 22:1 (April 1988)
- Gibbons, P.J., 'The Climate of Opinion', in G.W. Rice (ed.), *The Oxford History of New Zealand* (Auckland: Oxford University Press, 1995)
- Gilson, Miriam, 'The Changing New Zealand Family: A Demographic Analysis', in S. Houston (ed.), *Marriage and the Family in New Zealand* (Wellington: Sweet and Maxwell Ltd, 1970)
- Graham, Jeanine, 'Child Employment in New Zealand', *NZJH*, 21:2 (April 1987)
- 'Settler Society', in G.W. Rice (ed.), *The Oxford History of New Zealand* (Auckland: Oxford University Press, 1995)
- Houston, Stewart, 'The New Zealand Family: Its Antecedents and Origins', in S. Houston (ed.), *Marriage and the Family in New Zealand* (Wellington: Sweet and Maxwell Ltd, 1970)
- Hughes, Beryl, 'The Enquiry into the Te Oranga Girls Home, 1908', *Women's Studies Journal* 4:1 (September 1988)
- Lévesque, Andrée, 'Grandmother Took Ergot: An Historical Perspective on Abortion in New Zealand, 1897-1937', *Broadsheet*, nos.43 & 44 (October-November 1976)
- Lineham, Peter, 'Freethinkers in Nineteenth Century New Zealand', *NZJH* 19:1 (April 1985)
- Macdonald, Charlotte, 'Crime and Punishment in New Zealand 1840-1913: A Gendered History', *NZJH* 23:1 (April 1989)
- Martin, John E., 'Unemployment, Government and the Labour Market in New Zealand, 1860-1890', *NZJH* 29:2 (October 1995)
- Molloy, Maureen, '"No Inclination to Mix with Strangers": Marriage Patterns Among Highland Scots Migrants to Cape Breton and New Zealand, 1800-1916', *Journal of Family History* 11:3 (1986)
- 'Friends, Neighbours and Relations: The Practice of Kinship in Waipu, New Zealand', *Journal of Family History* 14:4 (1989)
- Oliver, W.H., 'Social Welfare: Social Justice or Social Efficiency?', *NZJH* 13:1 (April 1979)
- Olssen, Erik, 'Towards a New Society', in G.W. Rice (ed.), *The Oxford History of New Zealand* (Auckland: Oxford University Press, 1995)
- 'Where to From Here? Reflections on the Twentieth-Century Historiography of Nineteenth-Century New Zealand', *NZJH* 26:1 (April, 1992)

- Olssen, Erik & Andr  e L  vesque, 'Towards a History of the European Family in New Zealand' in P.G. Koopman-Boyden (ed.), *Families in New Zealand Society* (Wellington: Methuen, 1978)
- O'Neill, C. James, 'Fertility: Past, Present, and Future', in R.J.W. Neville and C.J. O'Neill (eds.) *The Population of New Zealand: Interdisciplinary Perspectives* (Auckland: Longman Paul Ltd, 1979)
- Pickens, K.A., 'Marriage Patterns in a Nineteenth Century British Colonial Population, 1850-1881' *Journal of Family History* 5:2 (Summer 1980)
- Pool, Ian & Fred Tiong, 'The Revolution in Pakeha Family Formation: 1876-1901', in 1990, *One Thousand Years of New Zealand Population: Heeding the Past and Planning for the Future*, Proceedings of the 1989 New Zealand Demographic Society Conference 23-24 May 1989, University of Waikato
- Richardson, Len, 'Parties and Political Change' in G.W. Rice (ed), *The Oxford History of New Zealand* (Auckland: Oxford University Press, 1995)
- Robinson, Jan, 'Canterbury's Rowdy Women: Whores, Madams and Female Criminality', *Women's Studies Journal* 1:1 (August 1984)
- Shuker, Roy, 'Moral Panics and Social Control: Juvenile Delinquency in Late Nineteenth Century New Zealand', in R. Openshaw & D. McKenzie (eds.), *Reinterpreting the Educational Past: Essays in the History of New Zealand Education* (Wellington: NZ Council for Educational Research, 1987)
- Shuker, Roy & Roger Openshaw, 'New Zealand Youth and Silent Movies', *New Zealand Journal of Educational Studies* 22:1 (1987)
- Stenhouse, John, '"A Disappearing Race Before We Came Here": Doctor Alfred Kingcome Newman, The Dying Maori, and Victorian Scientific Racism', *NZJH* 30:2 (October 1996)
- Tennant, Margaret, 'Social Welfare: Social Justice or Social Efficiency? Duncan MacGregor and Charitable Aid Administration', *NZJH* 13:1 (April 1979)
- Wood, G.A., 'Church and State in New Zealand in the 1850s', *Journal of Religious History* 8:3 (June 1975)

c) Unpublished theses and research essays

- Bauchop, Heather, 'The Public Image of Rape in New Zealand, 1950-1970' (B.A. (Hons.) Research Essay, University of Otago, 1990)

- Bayvel, Carolyn, 'Destitution, Desertion & Illegitimacy: New Zealand's Maintenance Legislation and its Operation in Dunedin Magistrate's Court, 1890-1900' (B.A. (Hons.) Research Essay, University of Otago, 1994)
- Beagle, Jan, 'Children of the State: A Study of the New Zealand Industrial School System, 1880-1925' (M.A. Thesis, University of Auckland, 1974)
- Belgrave, Michael, '"Medical Men" and "Lady Doctors": The Making of a New Zealand Profession, 1867-1941' (Ph.D. Thesis, Victoria University of Wellington, 1985)
- Birchall, Alana, 'Moral and Social Issues in the Presbyterian Church of Otago and Southland, 1894-1901' (B.A. (Hons.) Research Essay, University of Otago, 1981)
- Burns, A.C., 'Some Aspects of Censorship: A Survey of Censorship Law and Practice in New Zealand From 1841 to 1963, Mainly Concerning the Control of Indecent Publications' (M.A. Thesis, Victoria University of Wellington, 1968)
- Caldwell, Cheryl, 'Truby King and Seacliff Asylum, 1889-1907' (B.A. (Hons.) Research Essay, University of Otago, 1984)
- Chivers, Susan Lee, '"A Man's Home is His Castle": Domestic Violence in Dunedin, 1888-1914' (B.A. (Hons.) Research Essay, Otago, 1988)
- Clark, Miriam, 'Transcending Chastity and Continence: The Provision of Sex Education by Women's Organisations, 1930-1959' (M.A. Thesis, University of Canterbury, 1996)
- Cutfield, Lisa, 'Silent Films and Censorship, New Zealand 1908-1928' (B.A. (Hons.) Research Essay, University of Otago, 1994)
- Dalley, Bronwyn, 'From Demi-Mondes to Slaveys: A Study of the Te Oranga Reformatory for Delinquent Women, 1900-1918' (M.A. Thesis, Massey University, 1987)
- 'Women's imprisonment in New Zealand, 1880-1920' (Ph.D. Thesis, University of Otago, 1992)
- Dalton, Sarah, 'The Pure in Heart: The New Zealand Women's Christian Temperance Union and Social Purity, 1885-1930' (M.A. Thesis, Victoria University of Wellington, 1993)
- Fleming, Phillip J., 'Eugenics in New Zealand 1900-1940' (M.A. Thesis, Massey University, 1981)
- '"Shadow over NZ": The Response to Venereal Disease in New Zealand, 1910-1945' (Ph.D. Thesis, Massey University, 1989)
- Gallagher, Scott, 'Publishing Our Own Dishonour: the Criminalisation of Incest in New Zealand' (B.A. (Hons.) Research Essay, University of Otago, 1993)

- Gray, J.M., 'Potions, Pills and Poisons: Quackery in New Zealand circa. 1900-1915' (B.A. (Hons.) Research Essay, University of Otago, 1980)
- Gregory, D.A., 'Saving the Children in NZ. A Study of Social Attitudes Towards Larrikinism in the Later Nineteenth Century' (B.A. (Hons.) Research Essay, Massey University, 1975)
- Griffiths, S., 'Feminism and the Ideology of Motherhood in New Zealand 1896-1930' (M.A. Thesis, University of Otago, 1984)
- Hickey, Maureen, 'Breach of Promise of Marriage' (Postgraduate Diploma Research Essay, University of Otago, 1992)
- Holloway, Judith, '"Unfortunate Folk": A Study of the Social Context of Committal to Seacliff Asylum 1928-1937' (B.A. (Hons.) Research Essay, University of Otago, 1991)
- Labrum, Bronwyn, 'Gender and Lunacy: A Study of Women Patients at the Auckland Lunatic Asylum 1870-1910' (M.A. Thesis, Massey University, 1990)
- Lavelle, Bernadette M.G., 'Sexual Offences in the 1920s: Incidents and Attitudes' (B.A. (Hons.) Research Essay, University of Otago, 1986)
- Laws, Diane J., '"Opening the Floodgates": Changes in New Zealand Divorce Legislation 1867-1922' (B.A. (Hons.) Research Essay, University of Otago, 1980)
- Lucas, Heather, '"Square Girls": Prostitutes and Prostitution in Dunedin in the 1880s' (B.A. (Hons.) Research Essay, University of Otago, 1985)
- Madison, Jane, 'Comfort and Lies: A Study of Birth Control Quackery in New Zealand From 1880-1910' (B.A. (Hons.) Research Essay, University of Canterbury, 1996)
- Mairs, C.A., 'The Contagious Diseases Acts: An Examination of the Reasons for and Opposition toward Implementation of these Acts in England and New Zealand' (B.A. (Hons.) Research Essay, University of Auckland, 1973)
- Mansell, Wade McKenzie, 'The History of the Development of the Grounds for Divorce in New Zealand' (LL.M. Thesis, Victoria University of Wellington, 1970)
- May, Louise, '"Medical Malversations": The Quacks, the Quackery Prevention Act 1908, and the Orthodox Medical Profession's Push for Power' (B.A. (Hons.) Research Essay, University of Otago, 1994)
- McGeorge, Colin, 'Schools and Socialisation in New Zealand 1890-1914' (Ph.D. Thesis, University of Canterbury, 1985)

- McNab, Justin W., 'A Social-Historical Overview: Male Homosexuality in New Zealand' (M.A. Thesis, University of Auckland, 1993)
- Primrose, M.S., 'Society and the Insane, 1867-1926: A Study of Mental Illness in New Zealand with Special Reference to the Auckland Mental Hospital' (M.A. Thesis, University of Auckland, 1968)
- Robertson, Stephen, 'Production not Reproduction: The Problem of Mental Defect in NZ 1900-1939' (B.A. (Hons.) Research Essay, University of Otago, 1989)
- Rose, Kathryn, '"A Wholesome Terror"?: Female offending of Serious Crime in Nineteenth Century Canterbury, with Particular Reference to Infanticide' (B.A. (Hons.) Research Essay, University of Canterbury, 1993)
- Severinsen, Tony, '"Easy to Charge, Hard to Disprove": Responses to Sexual Assault on Women in New Zealand, 1860-1910' (M.A. Thesis, Victoria University of Wellington, 1995)
- Studholme, K.J., 'The Child: A Comparative Study 1920s-50s & 1980s-90s on the Discourse that Surrounds the Child and Sexuality' (B.A. (Hons.) Research Essay, University of Otago, 1995)
- Tennant, Margaret, 'Matrons with a Mission: Women's Organisations in New Zealand 1893-1915' (M.A. Thesis, Massey University, 1976)
- Workman, Joanne, 'Representing Rapists: Popular perceptions of Rapists in NZ 1900-1920' (B.A. (Hons.) Research Essay, University of Otago, 1994)

2. *International*

a) **Books**

- Allen, Judith, *Sex and Secrets: Crimes involving Australian Women Since 1880* (Melbourne: Oxford University Press, 1990)
- Arblaster, Anthony, *The Rise and Decline of Western Liberalism* (Oxford: Basil Blackwell, 1984)
- Ariès, Philippe, *Centuries of Childhood* (Harmondsworth: Penguin/Peregrine Books, 1986, 1st publ. 1962)
- Bajema, Carl Jay (ed.), *Eugenics: Then & Now* (Stoudsberg, Pennsylvania: Dowden, Hutchinson & Ross, Inc., 1976)
- Bacchi, Carol Lee, *Liberation Deferred? The Ideas of the English-Canadian Suffragists, 1877-1918* (Toronto: University of Toronto Press, 1983)

- *Same Difference: Feminism and Sexual Difference* (Sydney: Allen & Unwin, 1990)
- Barker-Benfield, G.J., *The Horrors of the Half-Known Life: Male Attitudes Toward Women and Sexuality in Nineteenth-Century America* (New York: Harper & Row, 1976)
- Bavin-Mizzi, Jill, *Ravished: Sexual Violence in Victorian Australia* (Sydney: University of New South Wales Press, 1995)
- Bland, Lucy, *Banishing the Beast: English Feminism and Sexual Morality, 1885-1914* (London: Penguin, 1995)
- Bouc  , Paul-Gabriel (ed.), *Sexuality in Eighteenth-Century Britain* (Manchester: Manchester University Press, 1982)
- Boyd, Kenneth, M., *Scottish Church Attitudes to Sex, Marriage and the Family, 1850-1914* (Edinburgh: John Donald Publishers Ltd, 1980)
- Branca, Patricia, *Silent Sisterhood: Middle Class Women in the Victorian Home* (Pittsburgh: Carnegie-Mellon University Press, 1975)
- Brandt, Allan, *No Magic Bullet: A Social History of Venereal Disease in the United States Since 1880* (New York: Oxford University Press, 1985)
- Bristow, Edward, *Vice and Vigilance: Purity Movements in Britain Since 1700* (Dublin: Gill & Macmillan, 1977)
- Budd, Susan, *Varieties of Unbelief: Atheists and Agnostics in English Society 1850-1960* (London: Heinemann, 1977)
- Bullough, Vern & Bonnie Bullough, *Women and Prostitution: A Social History* (New York: Prometheus Books, 1987)
- Cohen, Stanley, *Folk Devils and Moral Panics* (London: MacGibbon & Kee, 1972)
- Cohen, Stanley & Andrew Scull (eds.), *Social Control and the State* (Oxford: Basil Blackwell, 1983)
- Coleman, Peter, *Obscenity, Blasphemy and Sedition: One Hundred Years of Censorship in Australia* (Sydney: Angus and Robertson, 1974)
- Comfort, Alex, *The Anxiety Makers: Some Curious Preoccupations of the Medical Profession* (London: Thomas Nelson and Sons, 1967)
- Conrad, Peter & Joseph W. Schneider, *Deviance and Medicalization: From Badness to Sickness* (St Louis: The C.V. Mosby Company, 1980)

- Couvares, Francis G. (ed.), *Movie Censorship and American Culture* (Washington & London: Smithsonian Institution Press, 1996)
- Coveney, Lal, Margaret Jackson, Sheila Jeffreys, Leslie Kay & Pat Mahony, *The Sexuality Papers: Male Sexuality and the Social Control of Women* (London: Hutchinson/Explorations in Feminism Collective, 1984)
- Cunningham, Hugh, *The Children of the Poor: Representations of Childhood Since the Seventeenth Century* (Oxford: Blackwell, 1991)
- Daniels, K. (ed.), *So Much Hard Work: Women and Prostitution in Australian Society* (Sydney: Fontana/Collins, 1984)
- Davenport-Hines, Richard, *Sex, Death and Punishment: Attitudes to Sex and Sexuality in Britain Since the Renaissance* (London: Collins, 1990)
- Davidoff, Leonore & Catherine Hall, *Family Fortunes: Men and Women of the English Middle Class, 1780-1850* (London: Hutchinson, 1987)
- D'Emilio, John & Estelle Freedman, *Intimate Matters: A History of Sexuality in America* (New York: Harper & Row, 1989)
- Degler, Carl, *At Odds: Women and the Family in America From the Revolution to the Present* (Oxford: Oxford University Press, 1980)
- Digby, Anne, *Making a Medical Living: Doctors and Patients in the English Market for Medicine, 1720-1911* (Cambridge: Cambridge University Press, 1994)
- Donzelot, J., *The Policing of Families: Welfare Versus the State* (London: Hutchinson & Co., 1980)
- Duberman, Martin, *About Time: Exploring the Gay Past* (New York: Meridian, 1991)
- Duberman, Martin, M. Vicinus & G. Chauncey Jr. (eds.), *Hidden From History: Reclaiming the Gay and Lesbian Past* (London: Penguin Books, 1991)
- Dubinsky, Karen, *Improper Advances: Rape and Heterosexual Conflict in Ontario, 1880-1929* (Chicago & London: University of Chicago Press, 1993)
- Ehrenreich, Barbara *et al*, *Remaking Love: The Feminization of Sex* (Glasgow: Fontana, 1987)
- Ehrenreich, Barbara & Deirdre English, *For Her Own Good: 150 Years of the Experts Advice to Women* (London: Pluto Press, 1979)

- Faderman, Lillian, *Surpassing the Love of Men: Romantic Friendship and Love Between Women from the Renaissance to the Present* (New York: William Morrow & Co., 1981)
- Finch, Lynette, *The Classing Gaze: Sexuality, Class and Surveillance* (St Leonards: Allen & Unwin, 1993)
- Fisher, Trevor, *Scandal: The Sexual Politics of Late Victorian Britain* (Far Thrupp Stroud: Alan Sutton Publishing, 1995)
- Foucault, Michel, *The History of Sexuality: An Introduction*, Vintage Books reprint edition, 1990 (New York: Random House, 1978)
- Fout, John C., *Forbidden History: The State, Society and the Regulation of Sexuality in Modern Europe. Essays from the Journal of the History of Sexuality* (Chicago: University of Chicago, 1992)
- Gagnon, J.H. & W. Simon, *Sexual Conduct* (London: Hutchinson, 1974)
- Garton, Stephen, *Medicine and Madness: A Social History of Insanity in New South Wales, 1880-1940* (Kensington: New South Wales University Press, 1988)
- Gillis, John R., *For Better, For Worse: British Marriages, 1600 to the Present* (New York, Oxford: Oxford University Press, 1985)
- Gilding, Michael, *The Making and Breaking of the Australian Family* (Sydney: Allen & Unwin, 1991)
- Gittens, Diana, *The Family in Question: Changing Households and Familiar Ideologies* (London: Macmillan, 1993)
- Glass, D.V., *Numbering the People: The Eighteenth-Century Population Controversy and the Development of Census and Vital Statistics in Britain* (Farnborough: D.C. Heath Ltd/Saxon House, 1973)
- Golder, Hilary, *Divorce in New South Wales* (Kensington: New South Wales University Press, 1985)
- Gorham, Deborah, *The Victorian Girl and the Feminine Ideal* (Bloomington: Indiana University Press, 1982)
- Greenberg, David F., *The Construction of Homosexuality* (Chicago & London: University of Chicago Press, 1988)
- Haller, John S. Jr., and Robin M. Haller, *The Physician and Sexuality in Victorian America* (Urbana/Chicago/London: University of Illinois Press, 1977)

- Hammerton, A. James, *Cruelty and Companionship: Conflict in Nineteenth Century Married Life* (London & New York: Routledge, 1992)
- Harris, Marvin, *Why Nothing Works: The Anthropology of Daily Life* (New York: Simon and Schuster, 1981)
- Harrison, Fraser, *The Dark Angel: Aspects of Victorian Sexuality* (Glasgow: Fontana/Collins, 1979)
- Hicks, Neville, *'This Sin and Scandal': Australia's Population Debate, 1891-1911* (Canberra: Australian National University Press, 1978)
- Hopkins, Eric, *Childhood Transformed: Working Class Children in Nineteenth Century England* (Manchester & New York: Manchester University Press, 1994)
- Hyland, Paul & Neil Sammells, *Writing and Censorship in Britain* (London & New York: Routledge, 1992)
- Jeffreys, Sheila, *The Spinster and Her Enemies: Feminism and Sexuality, 1880-1930* (London: Pandora Press, 1985)
- Kent, Susan Kingsley, *Sex and Suffrage in Britain, 1860-1914* (Princeton: Princeton University Press, 1987)
- Kuhn, Annette, *Cinema, Censorship and Sexuality, 1909-1925* (London & New York: Routledge, 1988)
- Lawrence, Christopher, *Medicine in the Making of Modern Britain, 1700-1920* (London & New York: Routledge, 1994)
- Ledbetter, Rosanna, *A History of the Malthusian League, 1877-1927* (Columbus: Ohio State University Press, 1976)
- Levine, Philippa, *Victorian Feminism, 1850-1900* (London: Hutchinson, 1987)
- Lewis, Jane (ed.), *Labour and Love: Women's Experience of Home and Family, 1850-1940* (Oxford: Basil Blackwell, 1986)
- , *Women in England 1870-1950: Sexual Divisions and Social Change* (Brighton: Wheatsheaf, 1984)
- Lewis, Judith Schneid, *In the Family Way: Childbearing in the British Aristocracy, 1760-1860* (New Brunswick: Rutgers University Press, 1986)
- Loudon, Irvine, *Medical Care and the General Practitioner 1750-1850* (Oxford: Clarendon Press, 1986)

- MacDonagh, Oliver, *Early Victorian Government, 1830-1870* (London: Weidenfeld and Nicolson, 1977)
- Mangan, J.A. & J. Walvin (eds.), *Manliness and Morality: Middle Class Masculinity in Britain and America, 1800-1940* (Manchester: Manchester University Press, 1987)
- Marcus, Steven, *The Other Victorians: A Study of Sexuality and Pornography in Mid-Nineteenth Century England* (New York: Meridian, 1977)
- Martin, R., R. Mutchnick and W.T. Austin, *Criminological Thought: Pioneers Past and Present* (New York: Macmillan, 1990)
- McLaren, Angus, *A History of Contraception: From Antiquity to the Present Day* (Oxford: Basil Blackwell, 1990)
- McLeod, Hugh, *Religion and Society in England, 1850-1914* (New York: St Martin's Press, 1996)
- Mathews, Tom Dewe, *Censored: The Story of Film Censorship in Britain* (London: Chatto & Windus, 1994)
- Matthews, J.J., *Good and Mad Women: The Historical Construction of Femininity in Twentieth Century Australia* (Sydney: George Allen & Unwin, 1984)
- Mitterauer, Michael, *A History of Youth*, translated by Graeme Dunphy (Oxford: Blackwell, 1992)
- Mort, Frank, *Dangerous Sexualities: Medico-Moral Politics in England Since 1830* (London: Routledge and Kegan Paul, 1987)
- Moscucci, Ornella, *The Science of Woman: Gynaecology and Gender in England, 1800-1929* (Cambridge: Cambridge University Press, 1990)
- Parker, Stephen, *Informal Marriage, Cohabitation and the Law 1750-1989* (New York: St Martin's Press, 1990)
- Pateman, Carole, *The Disorder of Women: Democracy, Feminism and Political Theory* (Cambridge: Polity Press, 1989)
- _____, *The Sexual Contract* (Cambridge: Polity Press, 1988)
- Pearsall, Ronald, *The Worm in the Bud: The World of Victorian Sexuality*, 1st publ. 1969 (London: Pimlico, 1993)
- Perkin, Joan, *Women and Marriage in Nineteenth Century England* (London: Routledge, 1989)

- Phillips, Roderick, *Putting Asunder: A History of Divorce in Western Society* (Cambridge: Cambridge University Press, 1988)
- Pivar, David, *Purity Crusade: Sexual Morality and Social Control 1868-1900* (Westport: Greenwood Press, 1973)
- Platt, Anthony, *The Child Savers: The Invention of Delinquency* (Chicago: University of Chicago Press, 1969)
- Pollock, Linda, *Forgotten Children: Parent Child Relations from 1500-1900* (Cambridge: Cambridge University Press, 1983)
- Poovey, Mary, *Uneven Developments: The Ideological Work of Gender in Mid-Victorian England* (London: Virago Press, 1989)
- Porter, Roy (ed.), *The Cambridge Illustrated History of Medicine* (Cambridge: Cambridge University Press, 1996)
- Porter, Roy, *Disease, Medicine and Society in England, 1550-1860* (London: Macmillan, 1993)
- , *Health for Sale: Quackery in England 1660-1850* (Manchester & New York: Manchester University Press, 1989)
- Porter, Roy & Lesley Hall, *The Facts of Life: The Creation of Sexual Knowledge in Britain, 1650-1950* (New Haven & London: Yale University Press, 1995)
- Prins, Herschel, *Offenders, Deviants and Patients: An Introduction to the Study of Socio-Forensic Problems* (London: Tavistock Publications, 1980)
- Reardon, Bernard, *Religious Thought in the Victorian Age: A Survey from Coleridge to Gore* (London & New York: Longman, 1995)
- Riley, Denise, *'Am I That Name?': Feminism and the Category of 'Women' in History* (London: Macmillan, 1988)
- Roach Anleu, Sharyn L., *Deviance, Conformity and Control* (Melbourne: Longman Chesire, 1991)
- Rose, Lionel, *The Erosion of Childhood: Child Oppression in Britain, 1860-1918* (London & New York: Routledge, 1991)
- Royle, Edward, *Victorian Infidels: The Origins of the British Secularist Movement, 1791-1866* (Manchester: Manchester University Press, 1974)
- , *Radicals, Secularists and Republicans: Popular Freethought in Britain, 1866-1915* (Manchester: Manchester University Press, 1980)

- Saunders, K. & R. Evans (eds.), *Gender Relations in Australia: Domination and Negotiation* (Sydney: Harcourt Brace Jovanovich, 1992)
- Schom, Alan, *Emile Zola: A Bourgeois Rebel* (London: Queen Anne Press, 1987)
- Shanley, Mary L., *Feminism, Marriage and the Law in Victorian England, 1850-1895* (Princeton: Princeton University Press, 1989)
- Sheridan, Alan, *Michel Foucault: The Will to Truth* (London & New York: Tavistock Publications, 1980)
- Shorter, Edward, *The Making of the Modern Family* (New York: Basic Books, 1975)
- Siegal, Larry, *Criminology: Theories, Patterns and Typologies* (St Paul: West Publishing Company, 1992)
- Simon, William, *Postmodern Sexualities* (London & New York: Routledge, 1996)
- Smith, F.B., *The People's Health, 1830-1910* (London: Croom Helm, 1979)
- Smith-Rosenberg, C., *Disorderly Conduct: Visions of Gender in Victorian America* (New York: Oxford University Press, 1986)
- Sontag, Susan, *Illness as Metaphor* (London: Penguin, 1978)
- Stein, Edward (ed.), *Forms of Desire* (New York & London: Garland Publishing, 1990)
- Stone, Lawrence, *The Family, Sex and Marriage in England 1500-1800* (London: Weidenfeld & Nicolson, 1977)
- _____, *Road to Divorce: England 1530-1987* (Oxford University Press, 1990)
- Summers, Anne, *Damned Whores and God's Police: The Colonization of Women in Australia* (Harmondsworth: Penguin, 1975)
- Taylor, Arthur J., *Laissez-faire and State Intervention in Nineteenth-Century Britain* (London: Macmillan, 1972)
- Thomas, Donald, *A Long Time Burning: The History of Literary Censorship in England* (London: Routledge & Kegan Paul, 1969)
- Tranter, Neil, *Population and Industrialization: The Evolution of a Concept and its Practical Application* (London: Adam and Charles Black, 1973)
- _____, *Population Since the Industrial Revolution: The Case Of England and Wales* (London: Croom Helm, 1973)

- Tribe, David, *Questions of Censorship* (London: George Allen & Unwin Ltd, 1973)
- Trombley, Stephen, *The Right to Reproduce: A History of Coercive Sterilization* (London: Weidenfeld & Nicholson, 1988)
- Trudgill, Eric, *Madonnas and Magdalene: the Origins and Development of Victorian Sexual Attitudes* (London: Heinemann, 1976)
- Trumbach, *The Rise of the Egalitarian Family: Aristocratic Kinship and Domestic Relations in Eighteenth-Century England* (New York/San Francisco/London: Academic Press, 1978)
- Vicinus, Martha (ed.), *Suffer and be Still: Women in the Victorian Age* (Bloomington & London: Indiana University Press, 1972)
- ____ *A Widening Sphere* (London: Methuen, 1980)
- Walkowitz, Judith R., *Prostitution and Victorian Society: Women, Class and the State* (Cambridge: Cambridge University Press, 1980)
- ____ *City of Dreadful Delight: Narratives of Sexual Danger in Late-Victorian London* (Chicago: University of Chicago Press, 1992)
- Weeks, Jeffrey, *Coming Out: Homosexual Politics in Britain, from the Nineteenth Century to the Present* (London: Quartet Books, 1977)
- ____ *Sex, Politics and Society: The Regulation of Sexuality since 1800*, 1st publ. 1981 (London/New York: Longman, 1994)
- Wiener, Martin J., *Reconstructing the Criminal: Culture, Law and Policy in England, 1830-1914* (Cambridge: Cambridge University Press, 1990)
- Windschuttle, Elizabeth, *Women, Class and History: Feminist Perspectives on Australia, 1788-1978* (Sydney: Fontana/Collins, 1980)
- Wohl, Anthony, *Endangered Lives: Public Health in Victorian Britain* (London: J.M. Dent & Sons Ltd, 1983)
- Wolfram, Sybil, *In-laws and Outlaws: Kinship and Marriage in England* (London & Sydney: Croom Helm, 1987)
- Wotherspoon, Garry, *City of the Plain: History of a Gay Sub-Culture* (Sydney: Hale & Ironmonger, 1991)
- Wrigley, E.A. & R.S. Schofield, *The Population History of England, 1541-1871: A Reconstruction* (Cambridge: Cambridge University Press, 1993)

Zedner, Lucia, *Women, Crime, and Custody in Victorian England* (Oxford: Clarendon Press, 1994)

Zelizer, Vivian A., *Pricing the Priceless Child: The Changing Social Value of Children* (Princeton: Princeton University Press, 1994)

b) Articles, Chapters

Allen, Judith, '"Mundane" Men: Historians, Masculinity & Masculinism', *Historical Studies* 22:89 (October 1987)

———, 'Octavius Beale Re-considered: Infanticide, Babyfarming and Abortion in New South Wales 1880-1939', in Sydney Labour History Group, *What Rough Beast?: The State and Social Order in Australian History* (Sydney: George Allen & Unwin, 1982)

Anderson, Nancy F., 'The "Marriage with a Deceased Wife's Sister Bill" Controversy: Incest Anxiety and the Defense of Family Purity in Victorian England', *Journal of British Studies* XXI:2 (Spring 1982)

Bacchi, Carol, 'Evolution, Eugenics and Women: the Impact of Scientific Theories on Attitudes towards Women, 1870-1920', in Elizabeth Windschuttle (ed.), *Women, Class and History: Feminist Perspectives on Australia, 1788-1978* (Sydney: Fontana/Collins, 1980)

Barber, R., 'The Criminal Law Amendment Act of 1891 and the "Age of Consent" Issue in Queensland', *Australia and NZ Journal of Criminology* 10:2 (June 1977)

Behrman, Cynthia Fansler, 'The Annual Blister: A Sidelight on Victorian Social and Parliamentary History', *Victorian Studies* XI:4 (June 1968)

Best, Geoffrey, 'Evangelicism and the Victorians', in Anthony Symondson (ed.), *The Victorian Crisis of Faith* (London: Society for the Promotion of Christian Knowledge, 1970)

Bland, Lucy, 'The Married Woman, the "New Woman" and the Feminist: Sexual Politics of the 1890s', in Jane Rendall (ed.), *Equal or Different: Women's Politics 1800-1914* (Oxford: Basil Blackwell, 1987)

Carmichael, Gordon, 'So Many Children: Colonial and Post-Colonial Demographic Patterns', in K. Saunders & R. Evans (eds.), *Gender Relations in Australia: Domination and Negotiation* (Sydney: Harcourt Brace Jovanovich, 1992)

Chauncey, George Jr., 'From Sexual Inversion to Homosexuality: Medicine and the Changing Conceptualization of Female Deviance', *Salmagundi* 58-59 (1982-1983)

- Conley, Carolyn A., 'Rape and Justice in Victorian England', *Victorian Studies* 29:4 (Summer 1986)
- Connolly, Chris, 'Technology, Economic Development and Democracy in Australasian and World History' (unpublished 1996)
- Davin, Anna, 'Imperialism and Motherhood', *History Workshop* No. 5 (Spring 1978)
- Dunsford, Deborah, 'Principle versus Expediency: A Rejoinder to F.B. Smith', *Social History of Medicine* 5:3 (December 1992)
- Engelhardt, H. Tristram Jr., 'The Disease of Masturbation: Values and the Concept of Disease', in J.W. Leavitt & R.L. Numbers (eds.), *Sickness and Health in America: Readings in the History of Medicine and Public Health* (Madison, Wisconsin, 1985)
- Evans, David, 'Tackling the 'Hideous Scourge': The Creation of the Venereal Disease Treatment Centres in Early Twentieth Century Britain', *Social History of Medicine* 5:3 (December 1992)
- Finnane, Mark, 'Sexuality and Social Order: The State Versus Chidley', in Sydney History Labour Group, *The State and Social Order in Australian History* (Sydney: George Allen & Unwin, 1982)
- Fishbein, Leslie, 'Harlot or Heroine? Changing Views of Prostitution, 1870-1920', *The Historian* 43:1 (November 1980)
- Garton, Stephen, 'Sir Charles Mackellar: Psychiatry, Eugenics and Child Welfare in New South Wales', *Historical Studies* 22:86 (April 1896)
- _____, 'Sound Minds and Healthy Bodies: Re-Considering Eugenics in Australia, 1914-1940', *Australian Historical Studies* 26:103 (October 1994)
- _____, 'The "Tyranny" of Doctors: The Citizen's Liberty League in New South Wales, 1920-39', *Australian Historical Studies* 24:97 (October 1991)
- Gillis, John R., 'The Evolution of Juvenile Delinquency in England 1890-1914', *Past and Present*, No.67 (May 1975)
- Gordon, Linda and Ellen Dubois, 'Seeking Ecstasy on the Battlefield: Danger and Pleasure in Nineteenth Century Feminist Sexual Thought', *Feminist Review* (Spring 1983)
- Gorham, Deborah, 'The "Maiden Tribute of Modern Babylon" Re-examined: Child Prostitution and the Idea of Childhood in Late-Victorian England', *Victorian Studies* 21:3 (Spring 1978)
- Grimshaw, Patricia, 'Women and the Family in Australian History: A Reply to *The Real Matilda*', *Historical Studies* 18:72 (April 1979)

- _____'Women's Suffrage in New Zealand Revisited: Writing from the Margins', in Caroline Daley & Melanie Nolan (eds.), *Suffrage and Beyond: International Feminist Perspectives* (Auckland: Auckland University Press, 1994)
- Hahn Rafter, Nicole, 'Chastizing the Unchaste: Social Control Functions of a Women's Reformatory, 1894-1931', in Stanley Cohen & Andrew Scull (eds.), *Social Control and the State* (Oxford: Basil Blackwell, 1983)
- Hall, Lesley A., 'Forbidden by God, Despised by Men: Masturbation, Medical Warnings, Moral Panic, and Manhood in Great Britain, 1850-1950', in John C. Fout (ed.), *Forbidden History: The State, Society and the Regulation of Sexuality in Modern Europe. Essays from the Journal of the History of Sexuality* (Chicago: University of Chicago Press, 1992)
- Jones, Kathleen B., 'Citizenship in a Woman-Friendly Polity', *Signs: Journal of Women in Culture and Society* 15:4 (Summer 1990)
- Lake, Marilyn, 'The Politics of Respectability: Identifying the Masculinist Context', *Historical Studies* 22:86 (April 1986)
- L'Espérance, Jean, 'Doctors and Women in Nineteenth-Century Society: Sexuality and Role,' in John Woodward and David Richards (eds.), *Health Care and Popular Medicine in Nineteenth Century England* (London: Croom Helm, 1977)
- Lunbeck, Elizabeth, '"A New Generation of Women": Progressive Psychiatrists and the Hypersexual Female', *Feminist Studies* 13:3 (1987)
- McConville, Chris, 'Rough Women, Respectable Men and Social Reform: A Response to Lake's "Masculinism"', *Historical Studies* 22:88 (April 1987)
- McDonald, Peter & Patricia Quiggin, 'Lifecourse Transitions in Victoria in the 1880s', in P.Grimshaw, C. McConville, E.McEwen (eds.), *Families in Colonial Australia* (Sydney: George Allen & Unwin, 1985)
- McIntosh, Mary, 'Who Needs Prostitutes: The Ideology of Male Sexual Needs' in Carol Smart & Barry Smart (eds.) *Women, Sexuality and Social Control* (London: Routledge and Kegan Paul, 1978)
- Mein Smith, Philippa & Lionel Frost, 'Home Ownership in Adelaide, 1881-1911', *Australian Economic History Review* XXXV:1 (March 1995)
- _____'Suburbia and Infant Death in Late Nineteenth and Early Twentieth-Century Adelaide', *Urban History* Vol.21, part 2 (October 1994)
- Messerschmidt, James, 'Feminism, Criminology, and the Rise of the Female Sex "Delinquent", 1880-1930', *Contemporary Crises* 11:3 (1987)

- Morris, Polly, 'Incest or Survival Strategy? Plebeian Marriage within the Prohibited Degrees in Somerset, 1730-1835' in John C. Fout (ed.), *Forbidden History: The State, Society, and the Regulation of Sexuality in Modern Europe* (Chicago: The University of Chicago Press, 1992).
- Roberts, M.J.D., 'Morals, Art, and the Law: The Passing of the Obscene Publications Act, 1857', *Victorian Studies* 28:4 (Summer 1985)
- Schlossman, S. & Stephanie Wallach, 'The Crime of Precocious Sexuality: Female Juvenile Delinquency in the Progressive Era', *Harvard Educational Review* 48:1 (February 1978)
- Smith, F.B., 'The Contagious Diseases Acts Reconsidered' *Social History of Medicine* 3:2 (August 1990).
- ____ 'Labouchere's Amendment to the Criminal Law Amendment Bill', *Historical Studies* 17:67 (October 1976)
- ____ '"Unprincipled Expediency": A Comment on Deborah Dunsford's Paper', *Social History of Medicine* 5:3 (December 1992)
- Thomson, Mathew, 'Family, Community and State: The Micro-Politics of Mental Deficiency' in D. Wright & A. Digby (eds.), *From Idiocy to Mental Deficiency: Historical Perspectives on People with Learning Disabilities* (London & New York: Routledge, 1996)
- Tyler, D., 'The Case of Irene Tuckerman: Understanding Sexual violence and the Protection of Women and Girls, 1890-1925', *History of Education Review* 15:2 (1986)
- Tylor, Peter L., '"Denied the Power to Choose the Good": Sexuality and Mental Defect in American Medical Practice 1850-1920', *Journal of Social History*, 10:2 (1977)
- Walker, David, 'Continence for a Nation: Seminal Loss and National Vigour', *Labour History*, No.48 (May 1985)
- ____ 'Youth on Trial: The Mt Rennie Case', *Labour History*, no.50 (1986)
- Walkowitz, Judith R., 'Male Vice and Female Virtue: Feminism and the Politics of Prostitution in Nineteenth Century Britain' in A. Snitow, C. Stansell & S. Thompson (eds.), *Desire: The Politics of Sexuality* (London: Virago Press, 1984)
- ____ 'Dangerous Sexualities' in G. Fraise and M. Perrot (eds.), *Emerging Feminism from Revolution to World War*, Vol.IV of C.Duby and M. Perrot, general editors, *A History of Women in the West* (Cambridge, Massachusetts/London: Harvard University Press, 1993)

Theses

Coward, Dan, 'The Impact of War on New South Wales: Some Aspects of Social and Political History, 1914-1917' (Ph.D. Thesis, Australian National University, 1974)

Smith, F.B., 'Religion and Freethought in Melbourne, 1870-1890' (M.A. Thesis, University of Melbourne, 1960)